United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL

76-7091

United States Court of Appeals

For the Second Circuit

B
P/S

WILLIAM TERNER,

Plaintiff-Appellant,

against

Hon. JAMES D. HOPKINS, Justice of the Appellate Div. of the State of N.Y.; Hon. LEONARD RUBENFELD, J.S.C. of the State of N.Y.; JAMES DEMPSEY, Esq.; Hon. ALVIN R. RUSKIN, J.S.C. of the State of N.Y.; Hon. HAROLD L. WOOD, J.S.C. of the State of N.Y.; N.Y. State Sen. BERNARD G. GORDON, Chairman, N.Y.S. Judiciary Comm.; Hon. MARTIN B. STECHER, J.S.C. of the State of N.Y.; Hon. WM. A. WALSH, JR., J.S.C. of the State of N.Y.; JERALD S. KALTER, M.D.; Hon. JOHN C. MARBACH, J.S.C. of the State of N.Y.; MILDRED TERNER; KRAFTCO CORP., and MFG. HANOVER TRUST CO. (Transfer Agents for Kraftco Corp.),

Defendants-Appellees.

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

76-7091

DATE	FILINGS – PROCEEDINGS
2-23-76	Filed copies of docket entries and notice of appeal
3-4-76	Received docket fee
3-12-76	Filed motion by Pro-Se for extension of time to file record, appellant, p/s
3-30-76	Filed order granting leave to 5-17-76 to docket the record on appeal
5-17-76	Filed record (original papers of district court)
6-7-76	Filed pro-se scheduling order # 1

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Amended Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x

WILLIAM TERNER,

Plaintiff,

- against -

HON. JAMES D. HOPKINS, JUSTICE OF THE APPELLATE DIV. OF THE STATE OF N.Y.; HON. LEONARD RUBENFELD, J.S.C. OF THE STATE OF N.Y.; JAMES DEMPSEY, ESQ., HON. ALVIN R. RUSKIN, J.S.C. OF THE STATE OF N.Y.; HON. HAROLD L. WOOD, J.S.C. OF THE STATE OF N.Y.; N.Y. STATE SEN. BERNARD G. GORDON, CHAIRMAN, N.Y.S. JUDICIARY COMM.; HON. MARTIN B. STECHER, J.S.C. OF THE STATE OF N.Y.; HON. WM. A WALSH, JR., J.S.C. OF THE STATE OF N.Y.; JERALD S. KALTER, M.D., HON. JOHN C. MARBACH, J.S.C. OF THE STATE OF N.Y.; MILDRED TERNER, KRAFTCO CORP., AND MFG. HANOVER TRUST CO. (Transfer Agents for KRAFTCO CORP.),

Defendants.
- x

75 Civ. 3673 (WK)

AMENDED COMPLAINT

Plaintiff alleges:

THE PARTIES

1. Plaintiff is a citizen of the United States and resides in the Southern District of New York.

2. On information and belief, at all times herein the defendant Kraftco Corp. ("Kraftco") is a foreign public corporation and transacts business within the Southern District of New York.

3. On information and belief, at all times herein the defendant Manufacturers Hanover Trust Co. ("Manufacturers") is a national banking corporation with its principal place of business within the City of New York and more particularly within

the Southern District of New York, and is the transfer agent for the publicly traded stock and securities of the defendant Kraftco.

4. At all times herein, the defendant Hon. John C. Marbach ("Judge Marbach") is a Justice of the Supreme Court of the State of New York and a citizen and resident of the Southern District of New York.

5. At all times herein, defendant Hon. Justice William A. Walsh, Jr., ("Judge Walsh") was and is a resident of Westchester County, State of New York and a duly elected Judge of the Supreme Court of the County of Westchester, State of New York.

6. At all times herein, defendant Hon. Justice Leonard Rubenfeld ("Judge Rubenfeld") was and is a resident of Westchester County, State of New York and a duly elected Judge of the Supreme Court of the County of Westchester, State of New York.

7. At all times herein, defendant Hon. Justice Alvin R. Ruskin ("Judge Ruskin") was and is a resident of Westchester County, State of New York and a duly elected Judge of the Supreme Court of the County of Westchester, State of New York.

8. At all times herein, defendant Hon. Justice Harold L. Wood ("Judge Wood") was and is a resident of Westchester County, State of New York and a duly elected Judge of the Supreme Court of the County of Westchester, State of New York.

9. At all times herein, defendant Hon. Martin B. Stecher ("Judge Stecher") and upon information and belief, was and is a resident of New York County, State of New York and a duly elected Judge of the Supreme Court of the County of New

York, State of New York.

10. At all times herein, defendant Hon. James D. Hopkins ("Judge Hopkins") was and is a resident of Westchester County, State of New York and a duly appointed Justice of the Appellate Division, Second Judicial Department.

11. At all times herein, defendant James Dempsey ("Dempsey") was and is a resident of Westchester County, State of New York, is an attorney at law duly admitted to practice in the State of New York and a member of the law firm of Dempsey and Spring, P. C., White Plains, New York, and was retained by defendant Mildred Terner to represent her in a matrimonial litigation in New York State Supreme Court, Westchester County under Index Number 7920/1970.

12. At all times herein, defendant Bernard G. Gordon ("Gordon") was and is a resident of Westchester County, State of New York, is a duly elected New York State Senator, an attorney at law duly admitted to practice in the State of New York, maintaining an office for the practice of law in Peekskill, New York, is the former counsel for plaintiff William Terner and upon information and belief, referred defendant Mildred Terner to defendant Dempsey who represented her in the matrimonial litigation referred to hereinabove.

13. At all times herein, defendant Jerald S. Kalter ("Kalter") was and is a resident of New York County, State of New York, is a medical doctor duly licensed to practice in the State of New York, and was named by plaintiff herein as the co-respondent in a divorce action between plaintiff William Terner

and his former wife defendant Mildred Terner, and in due course said divorce action was tried in New York Supreme Court, Westchester County by defendant Judge Walsh without a jury.

14. At all times herein, defendant Mildred Terner was and is a resident of Westchester County, State of New York, and is the former wife of plaintiff William Terner.

JURISDICTION

15. This action arises under the United States Constitution, particularly under the provisions of the Fourteenth Amendment to the Constitution of the United States, and under Article VI of the Constitution of the United States. The matter in controversy exceeds the sum of $10,000.00 exclusive of interest and costs.

16. The jurisdiction of this Court is invoked under the provisions of Title 28 of the United States Code, Sections 1331, 1343, 2201 and 2202.

FACTS

17. An action for divorce was instituted by defendant Mildred Terner, former wife of plaintiff William Terner, in July, 1970, under index number 7920/1970, Supreme Court of the State of New York, County of Westchester. Defendant James Dempsey appeared of counsel for defendant Mildred Terner and defendant Judge Walsh presided.

18. A trial of that action before defendant Judge Walsh was commenced on December 18, 1970 and after many trial dates spread over an extensive period of time and was concluded on

19. Defendant Judge Walsh rendered a judgment of divorce which was entered for Mildred Terner on May 24, 1973, and without the benefit of any financially supported testimony directed the payment of interim alimony of $300.00 per week, and an allowance to her counsel, defendant James Dempsey, of $15,000.00 as interim counsel fees and in addition, exclusive occupancy of the jointly held marital residence at 17 Cornell Street, Scarsdale, New York, to defendant Mildred Terner.

20. An appeal to the New York Supreme Court, Appellate Division, Second Department, was taken by plaintiff and was decided by said Appellate Court on December 31, 1973, affirming the decision of the lower Court, but expressly striking the interim awards of alimony and counsel fees because no financial testimony was adduced at the trial in the lower Court. These issues were referred to Special Term, Part V, Westchester County Supreme Court for a hearing and final determination.

21. Financial hearings were held to determine alimony awards on May 29, 1974; May 31, 1974; June 24, 1974; June 25, 1974; and July 16, 1974 and a final order by defendant Judge Walsh was entered on October 31, 1974.

22. Said order directed that plaintiff herein pay his former wife Mildred Terner $300.00 per week alimony and that he pay her retroactive alimony awards of $300.00 per week as of May 24, 1973, aggregating $18,750.00 and retroactive child support of $50.00 per week as of May 24, 1973 to October 15, 1974 (the date when the one minor child at issue attained his majority of 21 years), aggregating $3,628.00; for a total of $22,378.00.

23. The above mentioned retroactive awards of alimony and child support were in addition to the amounts of monies plaintiff herein gave for support (upon the advice of his counsel and the demands of the Court) either directly to or on behalf of his former spouse and his then minor son Andrew.

24. The amounts of monies given directly to or on behalf of plaintiff's former spouse and his then minor son over the period from July, 1970 to October 31, 1974, are in excess of $100,000.00.

25. During the summer of 1970, defendant Mildred Terner gave her attorney defendant Dempsey, the sum of $15,000.00 as a retainer to represent her in her forthcoming divorce action.

26. On June 30, 1975, a hearing was held in Westchester County Supreme Court, State of New York, before defendant Judge Walsh, on the issue of counsel fees.

27. On September 12, 1975, a judgment was rendered by defendant Judge Walsh awarding defendant James Dempsey a counsel fee of $50,000.00 to be paid by plaintiff herein on his former wife's behalf.

28. The above referred to counsel fee award was in addition to the original $15,000.00 paid to defendant Mildred Terner's attorney by defendant herself as hereinabove stated.

29. The aggregate total of alimony awards both current, retroactive and previously paid (as of July, 1970), child support both paid and retroactive and counsel fee awards paid by defendant Mildred Terner herself to her attorney James Dempsey and subsequently ordered by defendant Judge Walsh for additional payments by plaintiff William Terner to defendant Mildred

Terner's attorneys, is somewhere in excess of $200,000.00 of which amount, plaintiff was ordered to pay all but $15,000.00 which had already been paid by his former wife to her attorney.

30. In said divorce action, defendant Kalter was named as the co-respondent and ever since an admitted clandestine rendezvous date on September 11, 1970, and up until the very present, defendant Kalter continues to have an ongoing intimate and meretricious relationship with defendant Mildred Terner.

31. Defendant Kalter in his open and notorious relations with Mildred Terner humiliates, mortifies and mentally distresses plaintiff William Terner in front of his family, neighbors and friends by constantly being present and seen at the subject former marital residence and which residence plaintiff maintained a long time office. Plaintiff had been compelled by the Courts of New York State to support the former marital residence and his former office for the comfort and pleasures of plaintiff's former wife and defendant Kalter. There are no children under the age of 21 years.

32. Defendant Mildred Terner has now sought to have the New York State Westchester County Supreme Court sequester plaintiff William Terner's assets.

33. Plaintiff herein cross-moved the Court to determine if Mildred Terner and defendant Kalter were either married or notoriously holding themselves out as husband and wife living intimately and travelling together within the State of New York,

out of the State, and out of the Country.

34. In an order dated September 3, 1975, defendant Judge Rubenfeld granted defendant Mildred Terner's application for a sequestration hearing and denied plaintiff William Terner's application for submission of evidence and the taking of testimony regarding the relationship between his former spouse and her aforenamed constant companion defendant Kalter.

35. A hearing on defendant Mildred Terner's application for sequestration was held before Judge Harold L. Wood on November 10, 1975, with William Terner appearing pro se. The Judge directed the Dempsey firm to submit a proposed order in connection with an order to show cause to sequester all of the property and assets of the plaintiff herein. That proposed order had been submitted to Judge Wood on November 19, 1975, which called for entry on November 24, 1975. The short form order of Judge Rubenfeld entered on September 3, 1975, stated -- "Upon the foregoing papers it is ordered that this motion shall be set down for a hearing on the issues of the amount of the alleged arrears and the plaintiff's alleged delay of the sale of the marital home, and for determination upon the filing of a note of issue, payment of appropriate fees and the service of a copy of the note of issue and of this order upon the clerk of Special Term, Part V.

The defense predicated upon Section 248 of the Domestic Relations law is dismissed for failure to supply sufficient factual support to warrant a hearing on the issue."

35. a. Defendant Judge Wood refused to hear the house issue, a part of the Judge Rubenfeld order; refused to grant to me a few days time to answer an ORDER TO SHOW CAUSE that I received the Saturday before the scheduled Monday morning hearing despite

that ORDER TO SHOW CAUSE calling for modification in the sequestration hearing and those modifications had never been before Judge Rubenfeld prior to his signing subject order; refused to accept my own ORDER TO SHOW CAUSE dealing with sequestration which defendant Judge Ruskin had also refused to accept or to even look at over a month before; refused to accept documentary proof including an attorney's affidavit as to the improprieties in Judge Ruskin's Court; refused to give any consideration to the fact that my adversaries had acknowledged receipt of service of my ORDER TO SHOW CAUSE a month before -- and this was confirmed before Judge Wood at that sequestration hearing; refused to give any consideration to my having advised him that Judge Ruskin told me to go to Federal Court if I wanted a stay -- which I did; refused to give me the right to examine or to cross-examine my adversaries; refused to grant to me any opportunity for me to get an attorney's opinion on the agenda of said hearings which was before Judge Wood at the time and upon which a vital interpretation disagreement existed; refused my request to have an attorney examine the minutes of that sequestration hearing in order that an attorney could prepare and submit upon my behalf a Memorandum of Law predicated upon the minutes.

b. About a week after that sequestration hearing the Dempsey firm submitted a proposed order which called for entry on November 24, 1975, and which was actually filed on December 1, 1975. This order was signed by Judge Wood exactly as presented to him by the Dempsey firm and the signed order is obviously a photocopy of that proposed order except for a counsel fee having been added for that approximately half-day Court hearing that was abruptly concluded by Judge Wood. That order calls for my total sequestration. The Dempsey firm took immediate positive steps based

upon said order. JA 11

36. No practical relief can be had other than to utilize the Federal Court as a tribunal for the serious allegations being made here. In the New York State 1974 Legislative Manual ("The Blue Book") on page 927, members of the Temporary State Commission on Judicial Conduct are listed. A paragraph defining that Commission's function is as follows:

"The Commission is empowered to receive and investigate complaints against any Judge of a unified Court system: to commence investigations on its own initiative, and where appropriate, to recommend disciplinary action including the convening of the Court of the Judiciary." It is shown on said page that the two members appointed to that Commission by the Chief Judge, of the Court of Appeals of the State of New York are:

Judge James D. Hopkins;
and
Judge Ann T. Mikoll

Both of these Judges, who were especially appointed to look into Judicial misconduct, have a personal and social relationship with attorney/politician James Dempsey. This is supported by documented evidence. To ask a Judge to rule upon his own misconduct or upon the misconduct of close associates is, to say the least, naive.

FIRST COUNT

37.(a) Defendant Judge Hopkins was the Appellate Division, Second Department Presiding Judge and signed an order denying plaintiff a motion for a new trial on April 15, 1974. Defendant Judge Marbach cites derogatory comments made to him about plaintiff by the Appellate Division, Second Department only a week later. The motivation for Judge Marbach's checking with the Appellate Division, Second Department concerning plaintiff's

credibility was brought about by derogatory comments made by defendant James Dempsey concerning that Appellate Division's opinion of plaintiff. Judge Marbach permitted himself to be influenced and biased by the Second Department's report to him of their opinion of plaintiff. Only a few weeks later, Judge Hopkins as well as Judge Mikoll were lavishly entertained by defendant James Dempsey at Mr. Dempsey's Peekskill, New York estate. Neither James Dempsey, who argued against plaintiff before the Appellate Division, Second Department on plaintiff's motion for a new trial nor Judge Hopkins revealed any personal or social relationship which is required by the Canons of Judicial Ethics in order to not conceal possible influencing factors on Court decisions and/or Court procedures. In fact, it was Judge Hopkins who denied plaintiff counsel of his choice and in effect, although proper application was made in accordance with accepted procedures - plaintiff herein was forced to either go pro se or to be represented by a young man barely out of law school. Plaintiff's adversary, indeed, at that Appellate hearing was the seasoned and influential attorney/politician James Dempsey.

(b) Judge Hopkins should either have disqualified himself or revealed in open Court his personal and social relationship with attorney Dempsey to give plaintiff an opportunity of requesting a presiding Justice without a personal and social relationship with any interested party; one who would not be subject to possible bias or influenced by sympathetic leanings. This would include friendly associate justices who might have personal or political interests in common with any of the litigating parties and/or trial attorneys before them.

(c) An attorney usually relies upon favorable decisions and/or favorable counsel fee awards which, in effect, control that attorneys financial fortunes. When an attorney lavishly entertains Judges (no doubt declaring same as business deductions), that attorney is misusing the basic concepts of Judicial ethics.

(d) The net result is to unfairly burden unsophisticated taxpayers for a larger than equitable tax liability. The I.R.S. codes certainly should not be stretched even by "Judicial discretion" for a practicing attorney to deduct business expenses by entertaining Judges he practices before and who control his fee awards. A lawyer entertaining clients or prospective clients is one thing; a lawyer entertaining Judges is different. Practically, this neat procedure makes plaintiff and countless other taxpayers and litigants pay for unfavorable decisions to them.

(e) It has taken plaintiff five years to discover the magic of attorney Dempsey's stunning legal victories and one can only speculate as to how many "less probing victims" have had to simply "grin and bear it."

SECOND COUNT

38. Defendant Judge Rubenfeld by his decision dated September 3, 1975, precluded plaintiff William Terner from questioning defendant Mildred Terner at a sequestration hearing about her alleged remarriage to defendant Kalter. Judge Rubenfeld was also a guest at defendant Dempsey's tent party on June 22, 1974, and did not reveal his personal and social relationship with attorney Dempsey. Despite that relationship, defendant Judge Rubenfeld decided an order to show cause brought

on by Mildred Terner in the case of Terner v. Terner, Index Number 7920/1970 (Westchester County Supreme Court) and ordered a hearing for a sequestration of plaintiff's assets as well as denying plaintiff's request for the hearing to include the intimate and ongoing relationship between defendants Mildred Terner and Kalter which could have negated any alimony and support awards. Defendant Judge Rubenfeld, in deciding this motion, never disclosed his personal and social relationship with defendant Dempsey, attorney for defendant Mildred Terner.

THIRD COUNT

39. Defendant attorney James Dempsey improperly had not revealed his role as a lavishly entertaining host of Judges before whom he practices. Nor did he refuse to undertake the assignment of representing defendant Mildred Terner while full well knowing that his close personal and political ally, N.Y.S. Senator Bernard G. Gordon, who led her to him, had been counsel to plaintiff herein. Dempsey full well knew before hand the intimate legal details of the impending litigation and therefore, should properly have declined this referral client. In fact, the legal professional Codes of Ethics not only dictate that he should have refused counsel under those conditions -- but he was and is not entitled to some $65,000.00 of legal fees of which $50,000.00 is presently Court awarded for which he is looking forward to receiving via sequestration of the assets of plaintiff herein.

FOURTH COUNT

40. Judge Alvin R. Ruskin was hearing motions at Special

Term, Part V, N. Y. Westchester County Supreme Court on October 6, 1975. An ex-parte application was attempted to be submitted to him upon plaintiff's behalf which Judge Ruskin refused to receive and/or even consider -- although the adversary party had been previously served -- merely as a courtesy -- which Judge Ruskin was aware. Judge Ruskin refused to even look at the motion papers, commenting that if plaintiff herein wished relief -- he would have to go to the Federal Court -- which plaintiff herein did, in fact, do. Judge Ruskin refused a properly made beforehand request to have a Court reporter transcribe the proceedings before him. Judge Ruskin complied with the Dempsey firm's various requests while assuming an intemperate posture towards plaintiff's interests presented at that time.

FIFTH COUNT

41.(a) On November 10, 1975, plaintiff appeared pro se at a scheduled sequestration hearing at Special Term, Part V N.Y.S. Westchester County Supreme Court and Judge Wood was presiding. I advised Judge Wood that I had made an oral application to your Honor in Federal Court for a stay of the sequestration hearing that was denied. I requested of Judge Wood that he accept my ex-parte order to show cause application for a stay that had been previously refused to be received by Judge Ruskin. Judge Wood refused. Judge Wood asked plaintiff what the Federal action was about and plaintiff so advised him.

(b) Plaintiff then requested that Judge Wood accept documentations including an affidavit of the happenings that had taken place before Judge Ruskin. Judge Wood refused.

(c) Plaintiff advised Judge Wood that he had received an order to show cause from the Dempsey firm by mail only two days before and that that order referred to issues not contained within the Judge Rubenfeld sequestration hearing order.

(d) Plaintiff further requested that the new issues should not properly be heard without Judge Wood ruling on the propriety of hearing the new issues that same day or more properly at a later time.

(e) Judge Wood denied this application.

(f) Plaintiff asked Judge Wood if he would instruct the Dempsey law firm to now respond to my ex-parte order to show cause that I had tried unsuccessfully to submit to Judge Ruskin -- especially since the Dempsey firm had acknowledged service over a month before and they were completely familiar with all of the facts. Judge Wood refused this request.

(g) Plaintiff advised Judge Wood that there could be no financial harm to my adversaries by the granting of a short adjournment to consider the merits of the issue since my ex-parte application papers contained proof that James Dempsey had received upon defendant Mildred Terner's behalf instantly negotiable checks and liquid assets amounting to approx. $30,000.00 while both defendant's Dempsey and Mildred Terner in sworn to affidavits after having received such funds -- stated that Mildred Terner was indigent.

(h) Paragraph #35 hereinabove contains the exact wording of the Judge Rubenfeld order which was to be the subject of the

sequestration hearing. Judge Wood acquiesced to the Dempsey firm's request to not give in to the house issue although clearly defined as part of the agenda for the sequestration hearing. In fact, the record of that hearing clearly shows that the Dempsey firm confirmed my previous contention that my appraisers access to the house was harassingly being frustrated. The Dempsey firm further stated that they would only grant my appraisers access to the former marital residence only if I agreed to drop litigation wherein I contend that I am the full owner of subject house.

(i) Judge Wood further refused to grant me the option of securing counsel to define the intent of Judge Rubenfeld's order and also denied me the right to submit a memorandum of law prior to his rendering a decision.

(j) The proceedings that day were concluded by Judge Wood without my having had an opportunity to cross-examine or even to rebut adversary allegations.

(k) Judge Wood instructed the Dempsey firm to submit a proposed order based upon their "surprise" order to show cause which in fact they did submit on November 19, 1975, which was to be submitted to Judge Wood according to the Dempsey firm "back" on November 24, 1975.

SIXTH COUNT

42.(a) Defendant N. Y. State Senator Gordon violated his attorney/client relationship with me. He had previous knowledge of the domestic problems and was aware that an imminent divorce was apparent. Gordon, as my attorney, had known intimate details of my domestic problems and wished to refer me to attorney Dempsey. I advised Gordon that I had another attorney in mind by the name of I. Erdheim. Gordon then led my then wife to Dempsey. There

is evidence of several violations by Gordon of an attorney/client relationship. Additionally, it was revealed that the co-respondent -- whose identity was finally ascertained a month or two after the official divorce proceedings were instituted against plaintiff herein that the co-respondent -- Dr. Kalter -- had been a long time family physician. It appears that aside from referral fee considerations -- which Gordon knew he could not engrandize himself from me -- that there may have been other personal considerations for co-respondent Kalter, motivating him to "throw his political clout" behind my adversaries.

(b) There were other "Strange Happenings" concerning Gordon which will be dealt with at a later time.

SEVENTH COUNT

43.(a) Judge Martin B. Stecher precluded plaintiff William Terner from making any motions in New York County Supreme Court in a related case without first obtaining Judge Stecher's permission. He also excused Mildred Terner from answering detailed interrogatories concerning her attorney/client relationship with New York State Sen. Gordon, Chairman of the New York State Judiciary Committee. Prior to the submission to Mildred Terner of the approximately fifty (50) detailed questions to be answered that conspiracy case (Index Number 22772/72, New York County Supreme Court) progressed in an orderly fashion.

(b) Additionally, Judge Stecher rendered a decision which I am advised is in violation of my Federal Constitutional rights -- in which he required me to "clear with him" before submitting any further motions.

Judge Stecher further referred to letters that he had received from my adversaries in his decision and accepted the contents of those letters as facts since he did not even bother to give plaintiff herein the courtesy of being made aware of the contents of subject letters -- although he cited his end result conclusion in his decision predicated upon those letters.

EIGHTH COUNT

44. a. Defendant Judge Walsh was the trial Judge at the divorce litigation in Westchester County Supreme Court, Terner v. Terner, Index Number 7920/1970. That trial spanned well over two years and it consisted of seventeen days broken up in small pieces. There was over 2,300 pages of testimony. Judge Walsh received from plaintiff herein at the end of the divorce litigation a 106 page Memorandum of Law along with a 530 page motion for a new trial or in the alternative a reopening of the litigation. Despite the approximately 700 pages (including exhibits) that were presented to Judge Walsh for his consideration in adjudicating the issues, Judge Walsh rendered a lengthy decision in four (4) working days after his receipt of the approximately 700 pages of the motion for a new trial or to reopen and brief of plaintiff herein. Logic dictates that it would take longer than that just to read the papers aside from deciding and dictating the lengthy decision rendered.

b. In that motion for a new trial, issues were presented that included Judge Walsh having excused without notice to plaintiff herein at least two subpoenaed witnesses who would have confirmed charges of alleged perjuries committed by adversary witnesses. In addition, there was a presentation of newly

discovered vital evidence. Also, there was evidence presented that strongly supported my contentions that actual adversary testimony was not only perjurious, but that that perjurious testimony had actually been cited by Judge Walsh as fact in his rendered decision. Judge Walsh denied without any explanation that motion for a new trial or to reopen. Considerable collateral litigation was required to document the evidence presented at that time. Judge Walsh was oftentimes intemperate. He constantly referred to making a record for an appeal which indicated that he must have had his mind made up ahead of time that he was going to rule against me. Judge Walsh awarded attorney Dempsey a $15,000.00 legal fee without the benefit of a financial hearing of plaintiff herein.

c. Judge Walsh expressed a complete lack of consideration for my extensive financial liabilities including substantial I.R.S. taxes made necessary by vast liquidations to comply with his astronomical awards both to my ex-spouse defendant Mildred Terner and to attorney Dempsey. In fact, when I attempted to present the extent of I.R.S. obligations brought about by these litigations -- Judge Walsh stated that he was not interested in the I.R.S. I requested permission to have the I.R.S. explain in Court the extent of subject liabilities brought about by litigation spawned forced sale of assets and Judge Walsh flatly refused to even entertain that matter.

d. Judge Walsh was presented with conclusive evidence that my former spouse had been stealing my financial records since she actually presented my own original records to Court as her evidence. Judge Walsh refused to give any consideration whatsoever

to the complicated problems that Plaintiff was beset with because of that stealing and tens of thousands of dollars of fraudulent divorce oriented charges run up by my former spouse.

e. It is curious, to say the least, that Judge Walsh awarded attorney Dempsey a $50,000.00 legal fee (on top of Dempsey already having received an additional $15,000.00) and the $50,000.00 was exactly the same figure that attorney Dempsey requested in Judge Walsh's chambers as his price for not holding counsel fee award hearings.

f. Judge Walsh stated apologetically on the Court record to attorney Dempsey that he (Judge Walsh) had (unsuccessfully) tried to get him a fee earlier.

g. Defendant Judge Walsh denied me access to my former place of business which was contained in a portion of the residence set aside for that purpose and was where I kept all of my records thereby causing serious complicated burdens upon me in addition to extra unnecessary financial encumberances.

h. There were numerous contradictions and inconsistencies in Judge Walsh's decisions which usually were practically verbatim to requests made by attorney Dempsey.

NINTH COUNT

45. a. Defendant Kalter, the named co-respondent in the divorce litigation, committed clear vital perjuries, suborned evidence, and engaged in conspiracy, all of which was clearly documented in collateral litigation. That evidence was made a part of a motion for a new trial or in the alternative to reopen, that was submitted both to defendant Judge Walsh and to the

Appellate Division, Second Department when defendant Judge Hopkins was the presiding Judge. Defendant Kalter made a substantial contribution to my having been denied equal protection under the laws in certain segments of the New York State Courts.

TENTH COUNT

46. a. Defendant Judge Marbach was the presiding Judge in N.Y.S. Supreme Court, Westchester County in an action entitled William Terner against Mildred Terner and Kraftco Corp., Index Number 1309/71. Defendant Judge Marbach permitted himself to first be influenced by attorney Dempsey to the extent of checking with the Appellate Division, Second Department as to the authenticity of attorney Dempsey's derogatory allegations against plaintiff. The report received by Judge Marbach from the Appellate Division, Second Department was derogatory to plaintiff William Terner. Only nine days before, on April 15, 1974, an order was signed by the Appellate Division, Second Department with defendant Judge Hopkins presiding, which denied William Terner's appeal for a motion for a new trial based upon Court irregularities, perjuries, and newly discovered evidence in the New York State, Westchester Court divorce litigation entitled Terner v. Terner, Index Number 7920/1970. This Amended Complaint contains evidence of a personal and social relationship between attorney Dempsey and Judge Hopkins which was never revealed at that hearing nor did defendant Judge Hopkins disqualify himself. Defendant Judge Marbach permitted the Appellate Court presided over by defendant Judge Hopkins to color the credibility of plaintiff William Terner. This is clearly reflected in subject minutes. This chain

reaction bias of one Court influencing another has nothing to do with retrying the case or insulating a Judge from a lawsuit as a result of an alleged unfair decision. The issue here is deprivation of plaintiff's Constitutional rights because of bias. Judge Marbach relieved attorney Irving I. Erdheim of Erdheim, Shalleck and Falk of N.Y.C., the former counsel for plaintiff and yet refused a few days of requested grace in order to have plaintiff represented by counsel of his choice.

b. More complete details of this are contained within the original action in this Court entitled William Terner, plaintiff, against KRAFTCO CORP., MANUFACTURERS HANOVER TRUST CO. (Transfer Agents For KRAFTCO CORP.), HON. JOHN C. MARBACH, Justice of the Supreme Court of the State of New York, and MILDRED TERNER, defendants, bearing this same docket number and more particularly plaintiff's AFFIDAVIT IN OPPOSITION submitted to this Court on December 10, 1975, contains all the pertinent facts in addition to my NOTICE OF MOTION FOR LEAVE TO APPEAL WITH PAPERS AND BRIEF IN SUPPORT THEREOF which was submitted to and denied by the N.Y.S. Court of Appeals.

c. Judge Marbach deprived me of my Constitutional rights, due process of law and equal protection of the laws -- in this case, fair and unbiased hearings.

ELEVENTH COUNT

47. a. Defendant Mildred Terner engaged in conspiracies, suborning of evidence and the attempted suborning of a witness, in addition to perjuring herself at trial. She engaged in larcenous acts of stealing my financial records and indiscriminate divorce oriented pledgings of my credit involving tens of

thousands of dollars. She engaged in fraudulent acts designed to enrich herself and to pauperize me such as charging substantial purchases and having her relatives return those purchases for cash credits. This was all documented at trial. The harassing effect of those acts along with the literally dozens of resulting litigations has made a major contribution to the overall denial of my Constitutional rights in certain segments of the New York State Courts.

TWELFTH COUNT

48. a. Defendant Kraftco Corp. had been advised in writing on at least four occasions not to release any accrued dividends and assets in connection with the shares represented by the Kraftco stock certificates V99742; V0111460; V11079; V0125446 and certificates reissued for same. Kraftco's counsel, Sullivan and Cromwell as well as Kraftco's Transfer Agent, Manufacturers Hanover Trust Co. were duly served on July 28, 1975, with a copy of the within action and were put on further notice to comply with previous correspondence on this same subject. Yet, on July 31, 1975, accrued dividends and subject common stock shares were turned over to defendant Dempsey for the account of defendant Mildred Terner. The covering letter from Manufacturers Hanover for that transfer of some $30,000.00 of cash and liquid assets was included as an Exhibit in the Order To Show Cause motion that defendant Judge Ruskin denied and even refused to read. Therefore, both Kraftco Corp. and Manufacturers Hanover Trust Co. (as Transfer Agents) made a contribution to my denial of Constitutional rights in N. Y. State.

THIRTEENTH COUNT

49. a. Defendant Manufacturers Hanover Trust Co. had been advised in writing on at least four occasions not to release any accrued dividends and assets in connection with the shares represented by the Kraftco stock certificates V99742; V0111460; V11079; V0125446 and certificates reissued for same. Manufacturers Hanover Trust Co. as well as Kraftco's counsel, Sullivan and Cromwell were duly served on July 28, 1975, with a copy of the within action and were put on further notice to comply with previous correspondence on this same subject. Yet, on July 31, 1975, accrued dividends and subject common stock shares were turned over to defendant Dempsey for the account of defendant Mildred Terner. The covering letter from Manufacturers Hanover for that transfer of some $30,000.00 of cash and liquid assets was included as an Exhibit in the Order To Show Cause motion that defendant Judge Ruskin denied and even refused to read. Therefore, both Manufacturers Hanover Trust Co. (as Transfer Agents) and Kraftco Corp. made a contribution to my denial of Constitutional rights in N. Y. State.

FOURTEENTH COUNT

50. a. Defendants herein have denied plaintiff his Constitutional rights as guaranteed to him in the Constitution of the United States.

FIFTEENTH COUNT

51. Plaintiff alleges that in doing the acts and things above complained, defendants became part of a conspiracy to deny and deprive him of his Constitutional rights.

SIXTEENTH COUNT JA 26

52. That the said acts of the defendants irreparably damaged, impaired, deprived the plaintiff's Constitutional rights and remedies and that the said acts continue in the case of Terner v. Terner and the plaintiff has no adequate remedy at law in the Courts of New York State.

SEVENTEENTH COUNT

53. That in addition to the flagrant Constitutional violations, that there were serious violations of the Canons of Judicial Ethics and flagrantly unethical professional conduct all of which contributed to the denial of plaintiff's Constitutional rights including the Fourteenth Amendment.

EIGHTEENTH COUNT

54. Plaintiff alleges that as the direct consequences and result of the acts of the defendants hereinabove complained of, plaintiff suffered serious injuries both physical and mental, and will in the future suffer great pain and has sustained severe nervous shock with resultant nervous injuries and certain of said injuries are of a permanent nature.

NINETEENTH COUNT

55. Plaintiff has suffered great humiliation and embarrassment; severe injury to his reputation and business affairs; all of which have required and will require the expenditures of large sums of money as and for medical care and treatment and his attempts to re-establish his business profits and prestige.

TWENTIETH COUNT

56. Each of the defendants, individually and in effect-

ive concert with the others, acted under pretense and color of law in their official and otherwise capacities, but said acts were without authorization of law and in abuse of their powers, and each defendant acted wilfully, knowingly and with specific intent to deprive plaintiff William Terner of his equal protection under the laws and procedural due process and which rights are secured to him by Article VI and the Fourteenth Amendment to the Constitution of the United States.

TWENTY-FIRST COUNT

57. By reason of all of the foregoing, plaintiff has been deprived of a full and fair hearing on the merits and his rights under the Constitution of the United States have been substantially infringed and violated.

WHEREFORE, plaintiff respectfully requests judgment against defendants, and each of them as follows:

1. Granting injunctive relief to plaintiff and therefore enjoining both temporarily and permanently any of the defendants from enforcing or effectuating any of the orders or judgments entered or to be entered in the case of Terner v. Terner, in the Supreme Court, Westchester County, N.Y.S., Index Number 7920/1970 and enjoining any further proceedings therein until the completion of this action.

2. Granting a judgment declaring all prior proceedings in the said case of Terner v. Terner null and setting same void and granting unto plaintiff a new trial in the above action in a venue outside the Courts of the State of New York.

3. Granting unto the plaintiff a money judgment in an amount to be determined by this Court as compensatory damages.

4. Granting unto the plaintiff a money judgment in an amount to be determined by this Court as punitive damages.

5. Granting unto the plaintiff reasonable legal and legal related fees including disbursements, together with all Court costs and expenses.

6. Granting unto the plaintiff such other and further relief as the Court may deem proper.

/s/ WILLIAM TERNER

Dated: New York, New York

December 30, 1975

WILLIAM TERNER,
Pro Se
575 Madison Avenue
New York, New York
10022
(212) PLaza 9-6700

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM TERNER,

Plaintiff,

- against -

HON. JAMES D. HOPKINS, Justice of the Appellate Div. of the State of N.Y.; HON. LEONARD RUBENFELD, J.S.C. of the State of N.Y.; JAMES DEMPSEY, ESQ.; HON. ALVIN R. RUSKIN, J.S.C. of the State of N.Y.; HON. HAROLD L. WOOD, J.S.C. of the State of N.Y.; STATE SEN. BERNARD G. GORDON, Chairman, N.Y.S. Judiciary Comm.; HON. MARTIN B. STECHER, J.S.C. of the State of N.Y.; HON. WILLIAM A. WALSH, JR., J.S.C. of the State of N.Y.; JERALD S. KALTER, M.D.; HON. JOHN C. MARBACH, J.S.C. State of N.Y.; MILDRED TERNER; KRAFTCO CORP.; and MFG. HANOVER TRUST CO. (Transfer Agents for KRAFTCO CORP.),

Defendants.

MY AFFIDAVIT

75 Civ. 3673 (WK)

-- I --
THE BASIS COMPELLING AN IMMEDIATE TEMPORARY STAY OF TWO N.Y.S. SUPREME COURT ORDERS PENDING THIS COURT'S DETERMINATION OF MY MOTION FOR A PRELIMINARY INJUNCTION

-- II --
AN OVERVIEW OF THE PAST FIVE YEARS COURT AND RELATED HAPPENINGS WHICH LED TO MY NOW BEING FORCED TO GO PRO SE HERE AND IN THE NEW YORK STATE WESTCHESTER COUNTY SUPREME COURT

-- III --
SUMMARY OF FACTUAL BACKGROUND

-- IV --
STATEMENT OF FACTS WITH EXHIBITS

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

WILLIAM TERNER, being duly sworn deposes and says:

I am the plaintiff in the above entitled matter.

-- I --

THE BASIS COMPELLING AN IMMEDIATE TEMPORARY STAY OF THE TWO N. Y. S. SUPREME COURT ORDERS PENDING THIS COURT'S DETERMINATION OF MY MOTION FOR A PRELIMINARY INJUNCTION

I URGENTLY NEED THE TEMPORARY STAY RESPECTFULLY REQUESTED OF THIS COURT - AT LEAST UNTIL YOUR HONOR HAS HAD TIME TO READ AND ASSESS THE BALANCE OF THESE PAPERS NECESSARILY MADE SO VOLUMINOUS BECAUSE OF THE MANIFOLD DEPRIVATIONS OF MY CONSTITUTIONAL RIGHTS IN NEW YORK STATE.

I hereby accuse and document that certain New York State Judges and politicians have conspired to deny me equal justice before the law as guaranteed by our Federal Constitution.

Their covert and even brazen and blatant overt practices over the past five years have cost me my health, several hundreds of thousands of dollars, and much of the fruits of my life's work.

I am not asking this Court to retry litigation, but only to examine whether or not Judicial misconduct and Court irregularities have made it impossible for me to receive justice in New York State.

At this moment, unless certain New York State Court orders are immediately temporarily stayed by this Court to provide your Honor time to examine my most serious accusations, sequestration and disposal of my assets under forced sale conditions will occur at any moment in order to guarantee a fifty-thousand dollar ($50,000.00) Court awarded counsel fee to one of the lawyer/politicians (See Aff. PART I Ex. "2") in addition to other lower Court awards made under conditions of conspiracy and bias designed to illegally enrich others at my expense.

Nothing can compensate me for the loss of my former good health nor for the practical loss of five years of my life.

This is not a business case; it involves my life and

the lives and moral values of my children -- all in their 20's.

For the sake of demonstrating to those young citizens that morality does indeed exist in our Country's Judicial system, I ask that you grant to me this one last opportunity for some degree of justice by reading my contentions in order for you to make your own determination based upon the facts.

Some segments of the New York State Courts rendered decisions without so much as reading submitted papers (which I will document), (See Aff. PART I Ex. "6" and "7").

The Judicial bias and the practice of the "judiciary to protect the judiciary" have resulted in one Court actually influencing the Judges' conduct of a different case in another Court. This pattern is clearly documented in Judge Marbach's answering papers now being presented to your Honor by the New York State Attorney General's office.

When all of the above are coupled with most attorneys' fear of Court reprisals it makes it practically impossible for an individual like myself, forced to go pro se, to pit myself against the vast legal staffs and financial resources of New York State especially when my adversaries have the advantage of "political influence working for them."

I do not claim that the Judges who I name here render consistently "crooked" decisions, but only that when a personal and social relationship exists between a trial attorney or a litigant and a Judge, that Judicial ethics require the disclosure of same to permit the adversary to

properly have the option of requesting that Judge to disqualify himself.

Attorney James Dempsey's social relationship with Judge James D. Hopkins of the New York State Appellate Division, Second Department was never revealed and Judge Hopkins was the presiding Judge who rendered a devastating and harassing decision against me. (This is detailed later.)

Only a week later in Judge Marbach's Court, attorney James Dempsey made derogatory references to Judge Marbach about me concerning Court happenings that had taken place a short time before in the Appellate Division, Second Department. Judge Marbach apparently checked with Judge Hopkins' Court because Judge Marbach stated on the record words to the effect that he had received confirmation from the Second Department that I was indeed a scoundrel.

The New York State Attorney General's office submitted those minutes of April 24 and April 25, 1974, which clearly showed Judge Marbach's bias -- obviously spawned by Judge Hopkins.

Only a few weeks later, Judge James D. Hopkins and Judge Leonard Rubenfeld, along with many other Judges whom attorney Dempsey practices before -- were being lavishly entertained by James Dempsey at his estate in Peekskill, New York. A private investigator's affidavit documents this within these papers, (See Aff. PART I Ex. "1").

Dempsey's friend Judge Rubenfeld happened to be presiding at the Special Part that had received cross motions from myself and attorney Dempsey representing the other side.

Judge Rubenfeld never disqualified himself nor did he reveal his relationship with attorney James Dempsey (See Aff. PART I Ex. "1") in order to give me an opportunity to request another Judge.

In accordance with Judge Rubenfeld's decision, a date for a sequestration hearing was to be set by Special Term, Part V, Westchester County Supreme Court, on October 6, 1975, (See Aff. PART I Ex. "4").

Judge Alvin R. Ruskin was hearing motions for Special Term, Part V, on October 6, 1975. I had made up an ex-parte application for an Order To Show Cause with ten pages of supporting papers requesting a stay of the setting of a sequestration hearing date pending the determination of allegations then and to be submitted to the Federal Court, Southern District of New York, (See Aff. PART I Ex. "5").

The request for a stay of the setting of a sequestration hearing date was made at the calendar call and Judge Ruskin, without reading the papers, set November 10, 1975, as the date for the sequestration hearing. He further stated that he would hear motions after the calendar call at which time subject ex-parte application for a stay could be presented.

After the calendar call, an attempt was made to resubmit those same ex-parte papers to Judge Ruskin. This time a request was made to Judge Ruskin for a Court reporter to record the happenings upon the presentation of the ex-parte application. This request for a Court reporter to be present was caustically and intemperately denied, (See Aff. PART I Ex. "6" and "7"). Judge Ruskin again

refused to receive or to even read the papers presented to him and said that if I wanted a stay -- I would have to get it from the Federal Court, (See Aff. PART I Ex. "6" and "7").

Attorney James Dempsey's firm had been served earlier that same day with a copy of the ex-parte application and order to show cause, as a courtesy to that firm -- since the authority for the ex-parte application did not require any prior service and that authority was cited in those papers (that Judge Ruskin never read).

This was disclosed to Judge Ruskin during the attempt to have Judge Ruskin officially receive those papers -- or at least to read them.

Judge Ruskin did not take one single positive step to even superficially hear my side. He certainly knew that the other side had been served despite the fact that it was an ex-parte application. He could have read the papers then and there -- but he did not; he could have granted the request for a Court reporter -- but he did not; he could have instructed the Dempsey firm to answer papers within a reasonable time that they admittedly acknowledged receipt of -- but he did not.

Judge Ruskin's instructions were to request a stay from the Federal Court.

I attempted to obtain proper order to show cause papers for presentation to this Court prior to the November 10, 1975, sequestration hearing date, in accordance with Judge Ruskin's instructions. This could not be logistically accomplished in time.

Therefore, on Friday, November 7, 1975, I requested and received permission from your Honor to present

an oral request for such stay (without formal submission of supporting papers). At that time, your Honor advised that there were no submitted papers to warrant such a request and that oral argument was insufficient to warrant a stay of the sequestration hearing.

On Monday, November 10, 1975, I appeared pro se at the scheduled sequestration hearing and the Hon. Harold L. Wood was presiding. I advised Judge Wood that I had made an oral application to your Honor for a stay that was denied and requested of Judge Wood that he accept my order to show cause ex-parte application for a stay that was refused by Judge Ruskin. Judge Wood refused to accept those very papers that Judge Ruskin had refused to accept. Judge Wood asked me what the Federal action was about and I advised him that it concerned my contention that certain segments of the New York State Courts had denied me equal protection under the law. A further conversation took place between Judge Wood and myself in which I stated that the order to show cause papers which Judge Ruskin had refused to accept named Judge Leonard Rubenfeld as having permitted himself to improperly adjudicate the basis for a sequestration hearing since Judge Rubenfeld had a personal and social relationship with attorney James Dempsey and, therefore, should have permitted me the option of requesting another Judge. I further stated to Judge Wood that this along with other issues would be presented to Federal Court in a consolidation of the initial Federal action, (See Aff. PART I - Ex. "8" which comprised the Court testimony before Judge Wood and which are referred to in the next few pages of this affidavit).

I requested that Judge Wood accept documentations including an affidavit of the happenings that had taken place before Judge Ruskin. Judge Wood refused to do this.

I advised Judge Wood that I had received an order to show cause from the Dempsey firm by mail on Saturday -- two days before the Monday, November 10, 1975 hearing -- and that the order to show cause made no provision for me to answer. I further explained that since that order to show cause referred to issues not contained in the Judge Rubenfeld sequestration hearing order -- that the new issues should not properly be heard that same day and that Judge Wood be given an opportunity to rule on whether or not the Dempsey application should properly be heard that day. Judge Wood denied this.

I advised Judge Wood that I was not an attorney and in fact had difficulty in securing the services of an attorney since I was alleging certain Court irregularities and most attorneys are afraid of Judicial reprisals. Therefore, I asked to be given a few days grace in order to try to get an attorney to answer the Dempsey firm's order to show cause which provided me no time to respond. This was denied.

I asked Judge Wood if he would instruct the Dempsey firm to now respond to my ex-parte order to show cause that I tried unsuccessfully to submit to Judge Ruskin -- especially since the Dempsey firm had acknowledged service a month before and were completely familiar with all of the facts. Judge Wood refused this request.

I advised Judge Wood that there could be no financial

harm to my adversaries by the granting of any adjournments. I further explained that my ex-parte application papers, that were refused to be received by Judge Ruskin, contained proof that James Dempsey had received on Mildred Terner's behalf instantly negotiable checks and liquid assets in the amount of approx.$30,000. Yet Dempsey and Mildred Terner both swore to affidavits after having received such funds that she was indigent, (See Aff. PART I Ex. "5").

That sequestration hearing was restricted by Judge Wood to specifically exclude my contentions that my adversaries were maliciously and deliberately preventing an orderly sale of the former marital residence. The adversary attorney did not wish to go into this issue and I stated that it was clear to me from Judge Rubenfeld's order that although Judge Rubenfeld had denied my request to air the issue as to why I should have to pay alimony to a woman holding herself out as the wife of the named co-respondent -- that Judge Rubenfeld did rule that the issue of my ex-spouses alleged impedings of an orderly sale of the former marital residence be aired. The adversary attorney wished to exclude this issue and Judge Wood granted his request.

A reading of those minutes will reveal that an offer was made to me by the adversary attorney to permit an appraisal of the premises and contents therein, preparatory to an orderly sale UNDER THE CONDITION THAT I DROP A LAWSUIT CONTENDING THAT I AM THE SOLE OWNER OF SAID PROPERTY. (What better proof could I have that my contentions were correctly presented to Judge Rubenfeld?) (See Aff. PART I Ex. "8" on pages 93 and 94.)

I reiterated to Judge Wood that Judge Rubenfeld's order clearly provided for the "airing" of this issue despite the adversary attorney's objection and despite Judge Wood's granting the adversary attorney's request to eliminate the house issue, (See Aff. PART I Ex. "4").

I then read the Rubenfeld order word for word and the Judge still insisted that he would not include that house issue. I then asked if the actual Judge Rubenfeld order was part of the proceedings of the November 10, 1975, hearing and Judge Wood said yes.

I then stated to Judge Wood that if I had read Judge Rubenfeld's order wrong then certainly I was not competent to legally represent myself and I asked for a one week adjournment in order for me to retain counsel. This was denied by Judge Wood.

The proceedings were then terminated without my former spouse going on the witness stand and without my having had an opportunity to counter any of the questions put to me while I was making statements on the witness stand.

A copy of the Judge Rubenfeld order is attached as part of these papers (See Aff. PART I Ex. "4") and both the Judge Wood proposed order on sequestration as well as the Hon. William A. Walsh's, Jr., order of his award of counsel fees in the amount of $50,000.00 are attached as part of these papers, (See Aff. PART I Ex. "3" and "2" respectively).

It should be noted that on November 19, 1975, nine days after the sequestration hearing -- the Dempsey firm sent

to me via regular mail (not certified, not registered, no return receipt requested) a proposed order based upon the Judge Wood sequestration hearing that was noted to be scheduled for entry on Monday, November 24, 1975. Judge Wood and my adversaries full well knew that I had been receiving mail at a P.O. Box and therefore could not even have the advantage of being daily aware of the mails addressed to me (See Aff. Part I Ex. "3").

These "high-handed" tactics can only be defined in the vernacular term as "cute."

I requested of Judge Wood that I be permitted a two week period from the time of my receipt of the Court proceeding transcript minutes in order to be given the opportunity to present a memorandum of law. This request was denied by Judge Wood with a comment that I was "not an attorney." I stated to Judge Wood that I wished the opportunity to attempt to secure the services of an attorney. My request was again denied (See Aff. Part I Ex. "8").

Precise documentation proves that I keep running into a "stone wall" with the segments of the N.Y.S. Judicial System that I cite in Part I of this affidavit. There should be no question in one's mind that whether this was caused by "influence" and/or whether this influence developed into <u>bias</u>, my constitutional rights have indeed been denied to me in N.Y.S.

It is a fact that Judge Hopkins is not only concerned here as the Presiding Judge of the Appellate Court that rendered to me a harassingly adverse decision, denied me counsel of my choice and no doubt influenced Judge Marbach to do likewise.

Mr. Justice Hopkins is also on the N.Y.S. Temporary State Commission on Judicial Conduct. It can be seen from the Amended Complaint Pg. 9, 10 that not only Judge Hopkins, but also Judge Mikoll are being entertained by attorney James Dempsey. It is naive for one to expect justice if that justice means that the one sitting in judgment must condemn himself in order to administer that justice.

This same principle applied when, in fact, I was advised that "proper legal procedure" was to ask Judge Walsh to "sit in judgment of himself" in my documentation of his own Court irregularities which he blandly and effectively dismissed with one word -- "denied." (That concerned my initial motion for a new trial or in the alternative -- to reopen said trial in the lower Court).

Judicial discretion has been stretched in Westchester County to a point where the Judges have, in effect, not only denied my Constitutional rights -- but in so doing have condoned my actually having had to provide a country home (my suburban house) for the convenience of my ex-spouse and the named co-respondent in the initial litigation. There are no minor children involved here.

Certain segments of the N.Y.S. Courts are forcing me to pay for at an impossibly high price for me -- the pleasures and conveniences of this financially successful physician -- to enjoy the fruits of my life's work. All I asked the lower Court to consider was the question of why I should have to illegally pay for the convenience of Dr. Kalter to live at the house that I maintain in order that he and my former spouse shall not be troubled with driving back from Kalter's exclusive country club

in Westchester -- to his eleven room luxury apartment in N.Y.C.

Attorney Gordon unprofessionally led my ex-spouse to attorney Dempsey. Attorney Dempsey unprofessionally accepted her as a client -- (perhaps substantial referral fees were the consideration).

My investigator's affidavit, attached here as (Aff. Part I -- Exhibit "1"), shows that attorney Dempsey entertains Judge Rubenfeld who recently rendered to me an adverse decision, when, in fact, he (Rubenfeld) should have disqualified himself, or at least revealed that personal and social relationship. Attorney Dempsey also entertains members of the N.Y.S. Temporary State Commission on Judicial Conduct; Judge Hopkins and Judge Mikoll -- as can be seen from that same investigator's report. The Temporary State Commission on Judicial Conduct has the function to recommend -- after investigation -- which Judges shall be investigated and tried for misconduct.

I have practically no recourse to any other tribunal for the protection of my Constitutional rights other than this one. I urgently need the stay requested in my Order to Show Cause which is a part of these papers.

There can be no financial harm to anyone in your granting such a stay. In fact, it can be seen -- as part of the Order to Show Cause papers that were refused to be even looked at by both Judge Ruskin and Judge Wood (Aff. Part I, Ex. "5") that both attorney Dempsey and my ex-spouse clearly swore to false affidavits in claiming that my ex-spouse was indigent, since they both full well knew that approximately

$30,000.00 in liquid assets were in their possession before they both swore to those false affidavits.

The manifold denials to me by certain segments of the N.Y.S. Courts has now resulted in my being subjected to the total sequestration of any and all assets that I possess according to an order signed by Judge Harold L. Wood entered on November 24, 1975 and filed on December 1, 1975. A copy of this order is attached to Part I of this affidavit as Aff. Part I, Ex. "3."

That exhibit contains the now entered order in front of the proposed order. A covering letter from the Dempsey firm to my bank which encloses a copy of that filed order documents that the actual execution of sequestration is taking place right now.

The $50,000.00 fee awarded to Dempsey by Judge Walsh is due to be paid January 17, 1976. (Dempsey admitted previously having received another $15,000.00). There can be no question that a forced sale of my house, the proceeds of which are to protect and secure the interests of Dempsey and of my ex-spouse, is right now in the process of being executed. There is no doubt, practically, that the liquidation will be made at a small fraction of its true worth under forced sale conditions. It is well known that certain courts have political favorites who wait like vultures for such exploitation opportunities. Certain lawyers, too, are reputed to capitalize upon such carte blanche opportunities.

For my children, all in their twenties, to feel that they can now "get away with anything" if they have an influential attorney is bad enough; for that denial of my Constitutional

rights to have cost me my former good health is bad enough; for the denial of my Constitutional rights to have effectively cost me several hundreds of thousands of dollars over the past five years is bad enough; for the denial of my Constitutional rights to have caused me to work almost twenty-four hours a day in my efforts against almost impossible odds is bad enough; for the denial of my Constitutional rights to have enriched others at my expense is bad enough, but for your Honor not to give this Court the opportunity of examining my serious allegations would indeed be against the best interests of substantial justice.

Unless your Honor immediately signs the stays requested in my Order to Show Cause, then the damage to me will be irreparable and whether or not your Honor grants my request to serve an Amended Complaint will be academic. I understand that although my stay request is of an unusual nature, that it is well within your powers to do so.

I respectfully submit to your Honor that the documented evidence presented here in Part I entitles me to your Honor's granting to me an immediate stay of the two New York State Supreme Court orders, pending this Court's determination of my motion for a preliminary injunction.

I request such stays and I am separately signing and having notarized this Part I of my affidavit in order to facilitate your Honor granting my request for a temporary stay since the facts contained only in Part I of my supporting affidavit compel such a stay.

This is Part I of four parts of my supporting affidavits. The other three parts will be sworn to separately since the

contents of those other parts refer to the evidence in support of my allegations that a more permanent stay is also required. I do not ask now for that type of stay -- but merely ask for a temporary, but immediate stay to enable this Court to properly review the credibility of my full accusations.

Sworn to before me this
30th day of December,
1975

s/ William Terner
William Terner

FREDERICK S. KOHLER
Notary Public, State of New York
No. 41-4506086
Qualified in Queens County
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF ULSTER) s.s.
TOWN OF MARLBOROUGH)

JOHN V. ESPOSITO, being duly sworn, deposes and says, I am employed as President of Intra-State Investigation Services, Inc., a New York State licensed private investigation firm located at Old Court House Building, Marlboro, New York.

On June 22, 1974, I was parked on Crompond Road, Peekskill, New York in the vicinity of the James Dempsey estate, with William Bomba, an investigator also employed by Intra-State Investigation Services, Inc.

I observed that a large tent was erected on a portion of the Dempsey estate which was partially screened from my view by trees and hedges.

Between the hours of 4:40 p.m. and 8:00 p.m., vehicles bearing the following listed New York State registration plates were observed parking on the street near the entrance to the Dempsey estate and entering and leaving the property.

(#1.) JSC-9	(#4.) JSC-193	(#7.) JSC-174
(#2.) USJ-8	(#5.) JSC-220	(#8.) SCJ-36
(#3.) JSC-269	(#6.) FCJ-96	(#9.) JSC-237
(#10.) 59	(#13.) (N.Y.) 17	(#16.) FRR-34
(#11.) WP-13	(#14.) MFG-6	(#17.) RAE-34
(#12.) EMA	(#15.) CHW	(#18.) CD-87
(#19.) HSL-7	(#22.) MJ-399	(#25.) RHH
(#20.) VV-8	(#23.) MAC-18	(#26.) 50-RC
(#21.) 30-MN	(#24.) 63-PUP	(#27.) TD-22

(#28.) 60-VVX	(#31.) 982-VVB	(#34.) (MD) 36976
(#29.) 399-PLP	(#32.) 577-WPP	(#35.) 282-WTN
(#30.) 404-NRC	(#33.) 914-QTK	(#36.) 290-ALB
(#37.) 238-WTQ	(#40.) 430-OGT	(#43.) 193-RJS
(#38.) 274-YKC	(#41.) 289-KZU	(#44.) 890-WKM
(#39.) 303-YKD	(#42.) 627-KSW	(#45.) 614-WHY
(#46.) 140-DFO	(#49.) 120-YKF	(#52.) 941-TAF
(#47.) 383-RTQ	(#50.) 645-KFG	(#53.) 334-PUY
(#48.) 323-WPZ	(#51.) FC-1128	(#54.) 95-KYX
(#55.) 193-NQB	(#58.) 595-WKK	(#61.) 754-KZD
(#56.) 561-PUQ	(#59.) 477-WPJ	(#62.) 486-OFC
(#57.) 512-BCR	(#60.) 542-ZGI	(#63.) 164-DHX
(#64.) 809-WPC	(#67.) 129-PKM	(#70.) 924-PKF
(#65.) 212-QAZ	(#68.) 345-PKH	(#71.) 9V-19
(#66.) 740-YUH	(#69.) 281-WJU	(#72.) JD-21

On June 24, 1974, I started preliminary investigation and subsequently learned some of the names of the persons to whom the license plate registrations were issued. Those names are as follows:

(#1.) JSC-9, Appellate Divison -- James D. Hopkins, 9 Sterling Road, Armonk, N.Y.

(#2.) USJ-8 -- David N. Edelstein, 1040 Park Avenue, New York, N.Y.

(#3.) JSC-269 -- Robert J. Trainor, 50 Overlook Avenue, Eastchester, N.Y.

(#4.) JSC-193 -- Leonard Rubenfeld, 400 Nelson Avenue, Peekskill, N.Y.

(#5.) JSC-220 -- George Beisheim, Jr., 31 Iroquois Road, Ossining, N.Y.

(#6.) FCJ-96 -- Vincent Gurahian, RFD #2, MacAuley Road, Katonah, N.Y.

(#7.) JSC-174 -- Morrie Slifkin, 45 Rosehill Avenue, Tarrytown, N.Y.

(#8.) SCJ-36 -- Raymond C. Baratta, 30 Thornwood Drive, Poughkeepsie, N.Y.

(#9.) JSC-237 -- Ann T. Mikoll, 35 Burke Drive, Buffalo, N.Y.

(#10.) 59 -- Dorothea E. Donaldson, 65 Brookside Place, New Rochelle, N.Y.

(#11.) WP-13 -- Evans V. Brewster, 26 Harvard Court, White Plains, N.Y.

(#12.) EMA -- Emery M. Anderson, 22 Chedworth Road, Scarsdale, N.Y.

(#13.) 17 (N.Y.) -- New York State Senator Bernard G. Gordon, Chairman of the State Judiciary Committee, office 1019 Park St., Peekskill, N.Y. (initial information had been confused with New York 17 which was an official car of N.Y.S. Dept. of Agric. and Markets).

(#14.) MFG-6 -- Mary F. Gagliardi, 207 Larchmont Avenue, Larchmont, N.Y. (not determined if connected with Judge Gagliardi).

(#15.) CHW -- Charles H. Wackerle, [illegible] Merchants Road,

Rochester, N.Y.

(#16.) FRR-34 -- Identification of ownership not retrievable from the Motor Vehicle Bureau at this time.

(#17.) RAE-34 -- Identification of ownership not retrievable from the Motor Vehicle Bureau at this time.

(#18.) CD-87 -- Calvin D. Dale, 1399 Longview Avenue, Peekskill, N.Y.

(#19.) HSL-7 -- Transportation, 1133 York Avenue, New York, N.Y.

(#20.) VV-8 -- George Fanelli, 30 Clinton Place, New Rochelle, N.Y. (believed to be a Judge George Fanelli).

(#21.) 30-MN -- Mildred Nacke, 30o Ringgold Street, Peekskill, N.Y.

(#22.) MJ-399 -- (New Plate #470MMB) Walter P. Hempfling, 476 Glen Ellyn Way, Rochester, N.Y.

(#23.) MAC-18 -- Leroy A. Camp, 950 Phoenix Avenue, Peekskill, N.Y.

(#24.) 63-PUP -- William McDonald, 17 Crescent Court, Peekskill, N.Y.

(#25.) RHH -- Samuel B. Hickman, North Lake Boulevard, Mahopac, N.Y.

(#26.) 50-RC -- William R. Sichol, 10 Viola Road, Suffern, N.Y.

(#27.) TD-22 -- Diana Dwyer, Box #214, Orchard Road, Mahopac, N.Y.

(#28.) 60-VVX -- George Longwell, 1234 Brook Street, Peekskill, N.Y.

(#29.) 399-PLP -- Identification of ownership not retrievable from Motor Vehicle Bureau at this time.

(#30.) 404-NRC -- County Trust Company, 235 Main Street, White Plains, N.Y.

(#31.) 982-VVB -- The County Trust Company, 64 North Broadway, Tarrytown, N.Y.

(#32.) 977-WPP -- County Trust Company, 235 Main Street, White Plains, N.Y.

(#33.) 914-QTK -- Pace College, 41 Park Row, New York, N.Y.

(#34.) (MD)-36976 -- Stuart S. Pines, 12 Dorsey Drive, Peekskill, N.Y.

(#35.) 282-WTN -- Firemans Fund Insurance Co., 1 North Broadway, White Plains, N.Y.

(#36.) 290-ALB -- Thomas R. Ryan, 929 Phoenix Avenue, Peekskill, N.Y.

(#37.) 238-WTQ -- Antonio Santoiemma, 601 Roosevelt Avenue, Peekskill, N.Y.

(#38.) 274-YKC -- Lawrence A. Behrman, 107 Bannon Avenue, Buchanan, N.Y.

(#39.) 303-YKD -- Joseph Sint, 20 Bonnie Meadows, Scarsdale, N.Y.

(#40.) 430-OGT -- Pat Crisipi, 61 South Main Street, New City, N.Y.

(#41.) 289-KZU -- John J. Harm, RFD, 3 Highland Drive, Peekskill, N.Y.

(#42.) 627-KSW -- Guardsman Lease Plan, 80 Sherwood Avenue, Farmingdale, N.Y.

(#43.) 193-RJS -- Wilbert Queen, 1849 Sedgwick Avenue, Bronx, N.Y.

(#44.) 890-WKM -- Denise Hein, 198 Richard Court, Pamona, N.Y. (Plate surrendered 4/9/74.)

(#45.) 614-WHY -- Evelyn B. Stewart, 2401 Pine Grove Court, Yorktown Heights, N.Y.

(#46.) 140-DFO -- Ruth Moschiano, 130 Hudson Avenue, Peekskill, N.Y.

(#47.) 383-RTQ -- Nancy C. Blake, 62 Bergelund Avenue, Staten Island, N.Y.

(#48.) 323-WPZ -- Lawrence Marro, Jr., RFD 8 Brookside Avenue, Peekskill, N.Y.

(#49.) 120-YKF -- O'Neil J. Kelly, Woodmont Road, Hopewell Junction, N.Y.

(#50.) 645-KFG -- Leroy Earle, 40 Clyde Avenue, Hempstead, N.Y.

(#51.) FC-1128 --(New plate 784-PUA) (Plate Surrendered 6/22/73) Frank Coleman, Oregon Corner, Putnam Valley, N.Y.

(#52.) 941-TAF -- Joseph L. Germeck, Box 141, Seymart Place, Mohegan Lake, N.Y.

(#53.) 334-PUY -- Kevin B. O'Connor, Strawberry Road, Lake Mohegan, N.Y.

(#54.) 95-KYX -- Edward F. Melville, Strawberry Road, Mohegan Lake, N.Y.

BEST COPY AVAILABLE

(#55.) 193-NQB -- Henry Fernandez, 2 Soundview Avenue, White Plains, N.Y.

(#56.) 561-PUQ -- Serge P. Hermann, Indian Brook Road, Garrison, N.Y.

(#57.) 512-BCR -- Nancy Dubovsky, 433 Arcady Road, Ossining, N.Y.

(#58.) 595-WKK -- Alexander Weir, 36 Sterling Avenue, Harrison, N.Y.

(#59.) 477-WPJ -- John P. Brophy, 352 Union Avenue, Peekskill, N.Y.

(#60.) 542-ZGI -- National Car Rental, CE Hancock Airport, Syracuse, N.Y.

(#61.) 754-KZD -- Murray Halperin, 18 Conklin Avenue, Peekskill, N.Y.

(#62.) 486-OFC -- James A. Shampine, 304 Lyman Avenue, Fulton, N.Y.

(#63.) 164-DHX -- Ruth H. Borbely, 806 Oakwood Drive, Peekskill, N.Y.

(#64.) 809-WPC -- Andrew R. Kansky, Apt. 5L, Rolling Way, Peekskill, N.Y.

(#65.) 212-QAZ -- Carol A. Shann, 87-14 80th Street, Woodhaven, N.Y.

(#66.) 740-YUH -- Jack A. Somers, 19 Stuyvesant Oval, New York, N.Y.

(#67.) 129-PKM -- Barbara A. Burke, 12 Whittier Avenue, Peekskill, N.Y.

(#68.) 345-PKH -- Ralph A. Hermesch, 64 Montrose Point Road, Montrose, N.Y.

(#69.) 281-WJU -- Dolores N. Davis, College Hill Road, Montrose, N.Y.

(#70.) 924-PKF -- Walter D. Henneke, 2731 Quaker Road, Yorktown Heights, N.Y.

(#71.) 9V19 -- (New Plate ...KZG) (Plate change 10/24/73) David C. Dempsey, 109 West Lake Drive, Valhalla, N.Y.

(#72.) JD-21 -- James Dempsey -- Crompond Road, Peekskill, N.Y.

Occupations of the owners of record are being researched through various sources. Some of those now available are listed here:

(#1.) JSC-9 Appellate Division, James D. Hopkins, Associate Justice -- Appellate Division, Second Judicial Department; Judge -- Supreme Court, Ninth Judicial District.

(#2.) USJ-8 David N. Edelstein, Chief Judge -- Southern District, U. S. District Court.

(#3.) JSC-269 -- Robert J. Trainor, Judge -- Second Department.

(#4.) JSC-193 -- Leonard Rubenfeld, Judge -- Ninth Judicial District.

(#5.) JSC-220 -- George Beisheim, Jr., Judge -- Ninth Judicial District.

(#6.) FCJ-96 -- Vincent Gurahian, Judge -- Family Court, Westchester County.

(#7.) JSC-174 -- Morrie Slifkin, Judge -- Ninth Judicial District.

(#8.) SCJ-36 -- Raymond C. Baratta, Judge -- Surrogate, Dutchess County.

(#9.) JSC-237 -- Ann T. Mikoll, Judge -- Eighth Judicial District.

(#10.) 59 -- Dorothea Donaldson, Judge -- New York State Court of Claims.

(#11.) WP-13 -- Evans V. Brewster, Judge -- Surrogate, Westchester County.

(#12.) EMA -- Emery M. Anderson, Chairman -- Supreme Court Library, White Plains, N.Y.

(#20.) VV-8 -- George Fanelli -- believed to be Judge, Ninth Judicial District.

Most of the automobiles contained, in addition to the driver, three or four additional passengers. Therefore, considerably more guests were in attendance than would be reflected by merely the count of actual automobiles. The identity of the guests in the category of "passengers" are presently unknown, as are certain other guests who may have arrived or left before the surveillance started and after the time of surveillance ended.

Some of the license plates appear to have unidentifiable ownerships. There exists in certain special circumstances involving high Government officials, a special courtesy extended to these officials by the Motor Vehicle Bureau which does not require ownership identification which could be traceable to registration plates. There is some possibility that certain unidentifiable

registration plates fall into this category but this cannot be stated as a certainty now.

There appeared to be considerable help required in connection with this large party, and since some of the above stated license plates were on older and less expensive automobiles, the possibility that this list includes at least some of the help attending to this affair is probable.

Voluminous and ongoing research had to be resorted to in order to develop above information. Ongoing research is still now underway by both my office as well as another private investigative agency cooperating with me, Fidelifacts, 25 Broad Street, New York, New York. We have had a noted lack of cooperation in many efforts to determine the ownership of certain of the registration plates including some rental companies and the motivation for such lack of cooperation is undetermined at this time. It is suggested that Court subpoena powers be invoked in those cases.

This affidavit is updated from my original affidavit on this same subject sworn to on the 26th day of July, 1974, which consisted of the best information available at that time.

I have read the foregoing statements consisting of ten (10) pages and it is true and correct to the best of my knowledge and belief.

JOHN V. ESPOSITO,
President

Sworn to before me this
7th day of November, 1975

Notary Public

Supporting Affidavit of John V. Esposito Dated July 26, 1974

STATE OF NEW YORK)
COUNTY OF ULSTER) s.s.
TOWN OF MARLBOROUGH)

JOHN V. ESPOSITO, being duly sworn, deposes and says, I am employed as President of Intra-State Investigation Services, Inc., a New York State licensed private investigation firm, located at Old Court House Building, Marlboro, New York.

On June 22, 1974, I was parked on Crompond Road, Peekskill, New York, in the vicinity of the James Dempsey estate, with William Bomba an investigator also employed by Intra-State Investigation Services, Inc.

I observed that a large tent was erected on the Dempsey property, which was partially screened from my view, by trees and hedges.

Between the hours of 4:40 P.M. and 8 P.M., vehicles bearing the following listed New York State registration plates were observed parked on the street near the entrance to the Dempsey property and entering and leaving the property.

JD-21, USJ-8, MFG-6, FCJ-96, 59, JSC-220, JSC-269, HSL-7, SCJ-36, JSC-287, JSC-9 Appellate Division, JSC-174, JSC-193, New York 17, MD36976, VV-8, 290-ALB, CHW, 238-WTQ, 274-YKC, 303-YKD, 439-OGT, 399-PLP, 289-KZU, 627-KSW, FRR-34, 193-RJS, RAE-34, 890KM, 614-WHY, EMA, 740-YUH, 129-PKM, WP-13, 345-PKH, 281-WJU, 924-PKF, 30MN, 140DFO, 282-WTN, 383-RTQ, 323-WPZ, MJ-399, 120-YKR, CD-87, 645-KFG, MAC-18, FC-1128, 9V-19, 941-TAF, 334-PUY, 95-KYX, 404-NRC, 982-VVB, 193-NQB, 561-PUQ, 512-BCR, 595-WKK, 477-WPJ, 63-PUP, 914-QTK, RHH, 577-WPP, 50-RC, 542-ZGI, 754-KZD, 486-OFC, 941-TAF, 164-DHX, TD-22, 60-VVX, 809-WPC, 212-QAZ.

On June 23, 1974, I learned from the Motor Vehicle Department in Albany, New York, the names of the persons to whom the registrations were issued. Those names are as follows:

1. JD-21 - James Dempsey-Crompond Road, Peekskill, N.Y.
2. USJ-8-David N. Edelstein-1040 Park Ave., New York City, N.Y.
3. MFG-6-Mary F. Gagliardi-207 Larchmont Ave., Larchmont, N.Y.
4. FCJ-96-Vincent Gurskian-RD#2, Macauley Road, Katonah, N.Y.
5. #59-Dorothea E. Donaldson-65 Brookside Place, New Rochelle, N.Y.
6. JSC-220-George Beisheim, Jr.-31 Iroquois Road, Ossining, N.Y.
7. JSC-269-Robert J. Trainer-50 Overlook Ave., Eastchester, N.Y.
8. HSL-7-Transportation-1133 York Ave., New York City, N.Y.
9. SCJ-36- Raymond C. Baratta-30 Thorswood Drive, Poughkeepsie, N.Y.

10. JSC-237-Ann T. Mikoll-35 Burke Drive, Buffalo, N.Y.
11. JSC-9-James D. Hopkins-9 Sterling Road, Armonk, N.Y.
12. JSC-174-Morrie Slifkin-45 Roschill Ave., Tarrytown, N.Y.
13. JSC-193-Leonard Rubenfeld-400 Nelson Ave., Peekskill, N.Y.
14. #17-New York State Dept. of Agriculture & Markets, State Office Bldg. #8, Albany, N.Y.
15. (MD) 36976-Stuart S. Pines-12 Dorsey Drive, Peekskill, N.Y.
16. VV8-George Fanelli-30 Clinton Place, New Rochelle, N.Y.
17. 290-ALB-Thomas R. Ryan-929 Phoenix Ave., Peekskill, N.Y.
18. CHW-Charles H. Wackerle-793 Merchants Road, Rochester, N.Y.
19. 238-WTQ-Antonio Santoiemma-601 Roosevelt Ave., Peekskill, N.Y.
20. 274-YKC- Lawrence A. Behrman-107 Bannon Ave., Buchanan, N.Y.
21. 303-YKD- Joseph Sint-20 Bonnie Meadows, Scarsdale, N.Y.
22. 430-OGT-Pat Crisipi-61 South Main St., New City, N.Y.
23. 399-PLP-No Hit
24. 289-KZU-John J. Harm-RD, 3 Highland Drive, Peekskill, N.Y.
25. 627-KSW-Guardsman Lease Plan-80 Sherwood Ave., Farmingdale, N.Y.
26. FRR-34- No Hit
27. 193-RJS- Wilbert Queen-1849 Sedgwick Ave., Bronx, N.Y.
28. RAE-34- No Hit
29. 890-WKM-Denise Hein-198 Richard Court, Pamond, N.Y. (plate surrendered 4/9/74).
30. 614-WHY-Evelyn B. Stewart-2401 Pine Grove Court, Yorktown Hgts., N.Y
31. 30MN-Mildred Nacke-308 Ringgold St., Peekskill, N.Y.
32. 140-DFO-Ruth Moschian-130 Hudson Ave., Peekskill, N.Y.
33. 282-WTN-Firemans Fund Insurance Co., 1 N.Broadway, White Plains, N.Y
34. 383-RTQ-Nancy C. Blake, 62 Bergelund Ave., Staten Island, N.Y.
35. 323-WPZ-Lawrence Marro, Jr.,-RFD, 8 Brookside Ave., Peekskill, N.Y.
36. MJ-399-(new plate #470MMB) Walter P. Hempfling-476 Glen Ellyn Way, Rochester, N.Y.
37. 120-YKF-O'Neil J. Kelly-Woodmont Road, Hopewell Jct., N.Y.
38. CD-87- Calvin D. Dale-1399 Longview Ave., Peekskill, N.Y.
39. 645-KFG-Leroy Earle-40 Clyde Ave., Hempstead, N.Y.
40. MAC-18-Leroy A. Camp=950 Phoenix Ave., Peekskill, N.Y.
41. FC-1128 (new plate #784PUA) (plate surrendered 6/22/73) Frank Coleman-Oregon Corner, Putnam Valley, N.Y.
42. 9V-19 (new plate #494KZG) (plate change 10/24/73) David C. Dempsey-109 West Lake Drive, Valhalla, N.Y.
43. 941-TAF- Joseph L. Germeck-Box 141, Seymart Place, Mohegan,Lake,N.Y
44. 334-PUY- Kevin B. O'Connor-Strawberry Road, Lake Mohegan, N.Y.
45. 95-KYX-Edward F. Melville-Strawberry Road, Mohegan, N.Y.
46. 404-NRC-County Trust Company-235 Main St., White Plains, N.Y.

47. 982-VVB-The County Trust Company-64 North Broadway, Tarrytown, N.Y.
48. 193-NQB-Henry Fernandez-2 Soundview Ave., White Plains, N.Y.
49. 561-PUQ-Serge P. Hermann-Indian Brook Road, Garrison, N.Y.
50. 512-BCR-Nancy Dubovsky-433 Arcady Road, Ossining, N.Y.
51. 595-WKK-Alexander Weir-36 Sterling Ave., Harrison, N.Y.
52. 477-WPJ-John P. Brophy-352 Union Ave., Peekskill, N.Y.
53. 63-PUP-William McDonald-17 Crescent Court, Peekskill, N.Y.
54. 914-QTK-Pace College-41 Park Row, New York, N.Y.
55. RHH-Samuel B. Hickman-North Lake Blvd., Mahopac, N.Y.
56. 577-WPP-County Trust Company-235 Main St., White Plains, N.Y.
57. 50-RC- William R. Sichol-10 Viola Rd., Suffern, N.Y.
58. 542-ZGI-National Car Rental-CE Hancock Airport, Syracuse, N.Y.
59. 754-KZD-Murray Halperin-18 Conklin Ave., Peekskill, N.Y.
60. 486-OFC-James A. Shampine-304 Lyman Ave., Fulton, N.Y.
61. 941-TAF-Joseph L. Germeck-Box 141, Seymart Place, Mohegan Lake, N.Y
62. 164-DHX-Ruth Boiberly-806 Oakwood Drive, Peekskill, N.Y.
63. TD-22-Diana Dwyer-Box #214, Orchard Rd., Mahopac, N.Y.
64. 60-VVX-George Longwell-1234 Brook St., Peekskill, N.Y.
65. 809-WPC-Andrew R. Kansky-Apt. 5L Rolling Way, Peekskill, N.Y.
66. 212-QAZ-Carol A. Shann-87-14 80th St., Woodhaven, N.Y.
67. EMA-Emery M. Anderson-22 Chedworth Rd., Scarsdale, N.Y.
68. 740-YUH-Jack A. Somers-19 Stuyvesant Oval, New York, N.Y.
69. 129-PKM-Barbara A. Burke-12 Whittier Ave., Peekskill, N.Y.
70. WP-13-Evans V. Brewster-26 Harvard Court-White Plains, N.Y.
71. 345-PKH-Ralph A. Hermesch-64 Montrose Point Road, Montrose, N.Y.
72. 281-WJU-Dolores N. Davis-College Hill Rd., Montrose, N.Y.
73. 924-PKF-Walter D. Hennedke-2731 Quaker Rd., Yorktown Hgts., N.Y.

I have read the foregoing statement consisting of three pages consisting of three pages and it is true and correct to the best of my knowledge and belief.

John V. Esposito
President

Sworn to before me this 26th day
of July, 1974.

[illegible] P. [illegible]
Notary Public, State of New York
Qualified in [illegible] County
Term Expires March 30, 19[illegible]

SHORT FORM ORDER

Exhibit 4 to Amended Complaint

JA 58

SUPREME COURT — STATE OF NEW YORK

~~TRIAL~~/SPECIAL TERM, PART WESTCHESTER COUNTY

Present:

HON. LEONARD RUBENFELD

Justice.

MILDRED TERNER,

Plaintiff,

— against —

WILLIAM TERNER,

Defendant.

INDEX NUMBER 7920-70, 19

MOTION DATE ..., 19

MOTION CAL. NUMBER

TRIAL CAL. NUMBER

The following papers numbered 1 to 5 read on this motion by plaintiff for an order of sequestration and for related relief

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause — Affidavits	1
Answering Affidavits	2-3
Replying Affidavits	4-5
Affidavits	
Filed Papers	
Pleadings — Exhibits — Stipulations — Minutes	

Upon the foregoing papers it is ordered that this motion shall be set down for a hearing on the issues of the amount of the alleged arrears and plaintiff's alleged delay of the sale of the marital home, and for determination, upon the filing of a note of issue, payment of appropriate fees and the service of a copy of the note of issue and of this order upon the Clerk of Special Term, Part V.

The defense predicated on §248 of the Domestic Relations Law is dismissed for failure to supply sufficient factual support to warrant a hearing on the issue.

Dated Sept. 3, 1975 Entered

Briefs: Plaintiffs — Defendants — Petitioners — Respondents

J. S. C.

Exhibit F-1 to Amended Complaint JA 59

MANUAL For the Use of the LEGISLATURE of the STATE OF

NEW YORK

1974

COMMITTEE ON PUBLIC ACCESS TO RECORDS

[Chaps. 578, 579, 580, L. 1974]

Created by Chapter 578 of the Laws of 1974, and amended by Chapters 579 and 580, the committee shall consist of the Commissioner of the Office of General Services or his delegate whose office shall act as secretariat for the committee, the Director of the Budget or his delegate, the Commissioner of the Office for Local Government or his delegate and four other persons who are not elected or appointed officials or employees of any other agency, designated by the Governor, at least two of whom are or have been representatives of the news media. Terms, subsequent to original appointees, three years. The Governor's appointees shall be reimbursed for actual expenses.

The committee shall advise agencies and municipalities regarding the Freedom of Information Law by means of guidelines, advisory opinions, regulations or other means deemed advisable; promulgate and issue rules and regulations; and recommend changes in the law.

Members	Residence	Terms expire
Robert W. Sweet	New York City	Sept. 1, 1975
Elie Abel	Sag Harbor	Sept. 1, 1976
Gilbert P. Smith	New Hartford	Sept. 1, 1977
T. Elmer Bogardus	Cazenovia	Sept. 1, 1978

Maj. Gen. Almerin C. O'Hara, Commissioner, Office of General Services
Richard L. Dunham, Division of the Budget
Sal J. Prezioso, Commissioner, Office for Local Government

TEMPORARY STATE COMMISSION ON JUDICIAL CONDUCT

[Chaps. 739, 740, L. 1974]

The commission shall consist of three persons appointed by the Governor, one of whom must be a lawyer admitted to practice in the State and two of whom shall not be lawyers or justices or judges of the unified court system; one person appointed by the President Pro Tem of the Senate; one person appointed by the Minority Leader of the Senate; one person appointed by the Speaker of the Assembly; one person appointed by the Minority Leader of the Assembly; and two persons appointed by the Chief Judge of the Court of Appeals, one of whom must be a justice of the Appellate Division of the Supreme Court and the other of whom must be a judge or justice of a court of record other than the Court of Appeals. None of the persons appointed by the legislative leaders shall be justices or judges of the unified court system. The members of the commission shall elect a Chairman from among their membership, who shall serve for two years. Terms, subsequent to original appointees, four years. Compensation: $150 per day for attendance at meetings or when engaged in commission business, not to exceed $10,000 per year. Annual report to the Governor, Legislature and Chief Judge of the Court of Appeals. Appropriation $75,000.

The commission is empowered to receive and investigate complaints against any judge of a unified court system; to commence investigations on its own initiative, and, where appropriate, to recommend disciplinary action including the convening of the Court on the Judiciary.

Members

Appointed by Governor:
- William F. Fitzpatrick, Syracuse ..... Sept. 1, 1975
- Mrs. Gene Robb, Latham ..... Sept. 1, 1976
- Howard Coughlin, Yonkers ..... Sept. 1, 1977

By President Pro Tem of Senate:
- Carroll L. Wainwright, Jr., New York City ..... Sept. 1, 1975

By Speaker of the Assembly:
- William M. Pinto, Sag Harbor ..... Sept. 1, 1978

By Minority Leader of Senate:
- William B. Lawless, New York City ..... Sept. 1, 1976

By Minority Leader of Assembly:
- Michael M. Kirsh, Brooklyn ..... Sept. 1, 1977

By Chief Judge, Court of Appeals:
- Ann T. Mikoll, Cheektowaga ..... Sept. 1, 1977
- James D. Hopkins, New York City ..... Sept. 1, 1978

TEMPORARY STATE XIII OLYMPIC WINTER GAMES COMMISSION

[Chap. 793, L. 1974]

The commission shall consist of 17 members, nine members appointed by the Governor, including one representative of the Environmental Conservation Department, one representative of the Education Department, one representative of the Commerce Depart-

Exhibit F-2 to Amended Complaint

Carey Names Screening Panels For His Judicial Appointments

By ALFONSO A. NARVAEZ
Special to The New York Times

ALBANY, May 22—Governor Carey announced today the formation of nominating committees for each of the four judicial departments in the state to screen prospective candidates for subernatorial appointment to the bench.

Under the terms of an executive order issued by the Governor on Feb. 24, he will appoint as judges only those persons recommended by the committees.

Among those appointed to the nominating committees were former Mayor Robert F. Wagner of New York, a long-time friend and adviser, and Charles Fish of Binghamton, a law partner of Warren M. Anderson of Binghamton, Republican majority leader in the State Senate.

The executive order applies to all judges appointed by the Governor, including justices of the Appellate Divisions of the State Supreme Court, judges of the Court of Claims, and vacancies in the Court of Appeals, the Supreme Court, Surrogate's Court, Family Court and County Court.

The committee for each judicial department consists of four persons appointed by the Governor, four by the chief judge of the Court of Appeals, two by the four legislative leaders and one by the presiding justice of the Appellate Division. No member of a committee may be a judge, an elected public official or [illegible] officer of a political party. They will serve without pay but will receive expenses.

At least two of the Governor's appointments and two of those appointed by the chief judge must be nonlawyers.

Following is a list of those appointed in each department:

FIRST DEPARTMENT

ROBERT F. WAGNER of New York City, chairman, (Democrat).
ANNE M. MONTERO of Manhattan, member of the Committee on Housing and Urban Development of the Community Service Society of New York. (Democrat).
CORNELIUS McDOUGALD of Manhattan, lawyer (Liberal).
MARGARET HARTMAN of the Bronx, of the Horace Mann School (Republican).
ROBERT P. PATTERSON Jr. of Manhattan, lawyer (Republican).
ROBERT KASANOF of Manhattan, lawyer. (Democrat).
HUGO RUIZ of Manhattan, banker. (Republican).
VERNON C. JORDAN Jr. of Manhattan, executive director of the National Urban League (Democrat).
MRS. PHILOMENA C D'APICE of the Bronx, lawyer (Democrat).
THORNTON G. EDWARDS of Larchmont, lawyer (Republican).
SEYMOUR M. KLEIN of Manhattan, lawyer.

SECOND DEPARTMENT

JOSEPH G. BARKAN of Queens, chairman, member of New York City Board of Education (Democrat).
HERBERT RUBIN of Queens, lawyer (Liberal).
BERNARD A. PALEY of Smithtown, publisher (Democrat).
JAMES DEMPSEY of Pos[illegible] III, lawyer (Republican).
ROY WILKINS of Queens, executive director of National Association for the Advancement of Colored People (Democrat).
MRS MARION P. AMES of Rye, lawyer (Republican).
JOHN H. FINN of Brooklyn, former Justice of the Supreme Court (Republican).
MRS. HELEN KAPLAN of Old Westbury, executive director of Nassau County Association for the Help of Retarded Children (Democrat).
JOSEPH LOMBARDO of Brooklyn, lawyer (Democrat).
RICHARD CAHN of Huntington, lawyer (Republican).
C[illegible]ELL S SCHIFFMACHER of Great Neck, lawyer

THIRD DEPARTMENT

FRANCIS BERGAN of Albany, chairman, former Associate Judge of the Court of Appeals (Democrat).
THOMAS McDEFFORN of Ithaca, architect (Democrat).
KENDALL BIRR of Elsmere, history professor (Liberal).
CHARLES FISH of Binghamton, lawyer (Republican).
WAGNER BOUCK of Albany, lawyer (Democrat).
MSGR. ROBERT F. MOORE of Gardiner, lawyer (Republican).
MRS. JEANNE MOORE of Glens Falls, coordinator in the Glens Falls area of the Court Monitoring Project of the Fund for Modern Courts (Democrat).
A. P CATHERWOOD of Ithaca, former State Industrial Commissioner (Republican).
JACOB H. HERZOG of Albany, lawyer (Democrat).
JEFFERSON F. MEAGHER of Binghamton, lawyer (Republican).
HOWARD C. ST. JOHN of Kingston, lawyer.

FOURTH DEPARTMENT

ROBERT I. MAILLONZI of Buffalo, chairman, lawyer (Democrat).
ABRAHAM D. CHATMAN of Rochester, union official (Democrat).
ARTHUR VICTOR Jr. of Buffalo, president of Wayne Corporation, (Republican).
LOUIS YOUNG of Syracuse, lawyer (Republican).
CHARLES T. BEECHING Jr. of Syracuse, lawyer (Republican).
PHILIP H. MAGNER Jr. of Buffalo, lawyer (Democrat).
DR JOHN LEERMAKERS of Rochester, retired vice president of Eastman Kodak Company (Republican).
NEWTON E. BIGELOW of Utica, psychiatrist (Independent).
MRS AIDA D RYAN of Esperhville, Public Health Nurse for Fulton County (Democrat).
LEONARD H AMOURSKY of Oswego, lawyer

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retirement may be postponed to allow an individual to use his accrued leave time.

According to Bernard Friedlander, assistant Corporation Counsel in charge of the pension division, a study of the applicable statues and decisions will now be made to determine the status of each category of retirement applicants in the face of the board's failure to act

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Notice of Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

WILLIAM TERNER,

Plaintiff,

- against -

KRAFTCO CORP., MANUFACTURERS HANOVER TRUST CO. (Transfer Agents for Kraftco Corp.), HON. JOHN C. MARBACH, JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, and MILDRED TERNER,

Defendants.

NOTICE OF MOTION

75 Civ. 3673
W.K.

----------X

S I R :

PLEASE TAKE NOTICE that upon the summons and complaint dated July 28, 1975, the affidavit of ROSALIND FINK, sworn to November 17, 1975 and all other proceedings heretofore had in this action, the undersigned will move this Court, in Court Room 1305 of the United States Courthouse, Foley Square, New York, New York, at a motion term thereof, on the 5th day of December, 1975 at 2:00 P.M. or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on the grounds that the complaint, as to said defendant, fails to state a claim upon which relief can be granted or over which this Court has jurisdiction, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
November 17, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Marbach
Office & P.O. Address
2 World Trade Center
New York, New York 10013

TO: RAYMOND M. PEZZO
Attorney for Plaintiff
272 Mill Street
Poughkeepsie, New York 12601

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM TERNER,

Plaintiff,

- against -

KRAFTCO CORP., MANUFACTURERS HANOVER TRUST CO. (Transfer Agents for Kraftco Corp.), HON. JOHN C. MARBACH, JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, AND MILDRED TERNER,

Defendants.

AFFIDAVIT

75 Civ. 3673
W.K.

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROSALIND FINK, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, and attorney for defendant the Hon. John C. Marbach.

I make this affidavit, on the basis of official documents in the case of Terner v. Terner, et al., Index No. 1309/1971 (Sup. Ct., Westchester Co. 1974), in support of defendant Marbach's motion to dismiss the complaint herein against him for failure to present a claim upon which relief can be granted or over which this Court has jurisdiction.

Plaintiff has brought the instant action under the Civil Rights Act, 42 U.S.C. § 1983 et seq., alleging violations of his constitutional rights arising out of the trial in the Supreme Court, Westchester County, of the action of Terner v. Terner, et al., in which he was also plaintiff. Defendant Marbach presided over that trial.

Terner v. Terner, et al. was commenced by service of summons on or about September 3, 1970. Plaintiff in that action sought a declaratory judgment that he was the owner of certain stock of the defendant Kraftco Corporation, nominally held in the name of his wife, defendant Mildred Terner and to direct her to endorse the stock over to the plaintiff, or in the alternative,

to have Kraftco Corporation register the stock in appellant's name; to require defendant Mildred Terner to account for all dealing made by her with the funds derived from said stock; and to require her to pay over to him all dividends received on the said stock. (Complaint, Terner v. Terner, annexed hereto as Exhibit A, p. 4).

Pre-trial proceedings having been completed, at the beginning of the April, 1974 Term the action was put down for trial on April 17, 1974 (Minutes of Proceedings in Supreme Court, Westchester County [hereafter "Minutes"], April 24, 1974 [a copy of which is annexed hereto as Exhibit B] at 2-3). Plaintiff's counsel, Irving I. Erdheim, being unavailable at that date, the action was put over at Mr. Erdheim's request until April 24, 1974.

On that day, Mr. Erdheim moved for permission to withdraw because of an "insurmountable impasse" with his client. He informed the Court that Samuel Gottlieb, Esq., of the firm of Gainsburg, Gottlieb, Levitan & Cole was prepared to assume representation of plaintiff's case, but that Mr. Gottlieb was not present because of a prior engagement in a federal court (id. at 3-5).

Justice Marbach noted that the case has been set down for trial on a set date at the beginning of the Term, and that this date had already been changed once at Mr. Erdheim's request. He then stated that he would not permit a shift of counsel at the last minute which would tie up the Court or prevent it from holding an already-scheduled trial. The case was therefore set down for trial the following day, Justice Marbach noting that Mr. Gottlieb was a member of a firm with many associates and that, as Mr. Gottlieb had indicated a willingness to represent the plaintiff, either he or someone else from his firm should be prepared to go to trial at that time. (id. at 5-6, 8-9).

Mr. Erdheim then called Mr. Gottlieb -- finding him in his office, and not in federal court -- and reported on his conversation to the Court. Essentially, he stated that he informed Mr. Gottlieb of Justice Marbach's intention to try the action on April 25, 1975, and the Justice's further direction that Mr. Gottlieb or one of his associates be present. He reported that Mr. Gottlieb, after being told of Justice Marbach's intentions, nonetheless informed him that he "could be there on May 2 to try the case," because of earlier engagements in two federal actions. (id., at 10-12).

The following morning plaintiff appeared before the Court without counsel. Justice Marbach noted that he had as yet received no notice of appearance from Mr. Gottlieb's firm, nor had anyone from that firm made any effort to contact him. He further noted that the date of trial had been cleared with attorneys for both sides, several weeks earlier. (Minutes of April 25, 1975, [a copy of which is annexed hereto as Exhibit C] at 3-5).

The attorney for Mildred Terner noted that he had had no notice of plaintiff's request for adjournment prior to the previous day's proceedings, and that he had witnesses in court, both on that day and presently, ready to testify, (id. at 3-4).

Justice Marbach then ordered plaintiff to call Mr. Gottlieb's office and tell them to have an attorney in Court that afternoon (id. at 6-7).

After lunch, the proceedings resumed. No one from Mr. Gottlieb's office was present and Justice Marbach noted that he had received information that, contrary to plaintiff's assertion that he had only retained Mr. Gottlieb the previous day, it appeared that Mr. Gottlieb had in fact been retained by plaintiff several weeks earlier on related matrimonial actions, a statement which plaintiff did not deny (id, at 9-10).

The trial then commenced, plaintiff proceeding pro se. As a review of the minutes makes clear, the issue before the Court was a simple one -- the ownership of certain certificates of stock.

The stock had been given to defendant Mildred Terner by plaintiff's father, and was held in Mildred Terner's name; plaintiff's claim of ownership was based solely on the alleged intent of his father at the time the gift was made.

The only evidence plaintiff offered as to his father's intent to give the property to him was plaintiff's own oral testimony; depite the fact that his father was still alive, living in Florida, plaintiff did not produce his father at trial. Further, plaintiff made no request to introduce his father's testimony by deposition, due to his father's alleged infirmity, until the completion of the trial, a request which was denied, Justice Marbach noting that he had at no time previous to trial been asked to authorize such a deposition, nor had he ever been given a medical certificate explaining why use of such a deposition at trial was necessary. (id. at 50-53, 55 and passim).

At the trial, both Mr. and Mrs. Terner's version of the facts were elicited without difficulty.

Further, Justice Marbach, in an effort to aid plaintiff, asked questions of Mildred Terner (id. at 35) and explained repeatedly to plaintiff the nature of the questions legally relevant to his claims (id. at 44-5). He let plaintiff testify in narrative form (id. at 46), and asked him questions aimed at eliciting the relevant facts (id. at 46-7).

At the completion of the trial, Justice Marbach, having heard testimony of Mr. and Mrs. Terner, as principal witnesses, found for Mrs. Terner, noting both that she was a credible witness (id. at 55, 56) and that, "even on Mr. Terner's version of the terms of the delivery [of the shares of stock at issue], he was speaking of a transaction....which would appear... to be unenforcible, even if his version is true." (id. at 56).

Judgment was entered on May 21, 1974. Plaintiff filed a Notice of Appeal with the Appellate Division, Second Department, but a question arose as to the timeliness of the Notice. On September 13, 1974, a hearing was had in the Second Department. Judge Timothy J. Sullivan decided the factual issues out of which the timeliness question arose against plaintiff, in a decision dated October 10, 1974, a copy of which is annexed hereto as Exhibit D.

Instead of appealing that decision, plaintiff instituted this action, claiming that defendant Marbach, in compelling him to proceed to trial as above-described, violated his constitutional rights. (Complaint, paras. 2, 8-12, 15-16). He also apparently wishes to challenge the decision regarding the timeliness of his Notice of Appeal, "emphatically" denying the facts as found by Judge Sullivan, (id., para. 15). The relief sought for this alleged deprivation is a declaration by this Court that the decision in Terner v. Terner, et al., is void and unenforcible, and a direction by this Court of a re-trial of that action, (Complaint, p. 6) in which event plaintiff would have a second opportunity to raise his claims against Mrs. Terner, despite the fact that they have already been fully litigated in state court.

It is defendant Marbach's contention that this complaint must be dismissed as to him, as it does not state a cognizable claim under the Civil Rights Act, it violates the doctrines of judicial immunity and res judicata, and the "Rooker" doctrine that a federal district court is without jurisdiction to reconsider issues already litigated in a state court action, and the fact that, even assuming plaintiff's factual claims to be true, defendant Marbach's actions, as revealed by the record in Terner v. Terner, et al., clearly do not constitute a deprivation of plaintiff's constitutional rights.

For these reasons, defendant Marbach respectfully requests that his motion to dismiss the complaint against him be granted.

Rosalind Fink
ROSALIND FINK

Sworn to before me this
17th day of November, 1975

Morgan Evans Ripley
Assistant Attorney General
of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

- -x

WILLIAM TERNER,

Plaintiff,

-against-

VERIFIED COMPLAINT

MILDRED TERNER and
KRAFTCO CORPORATION,

Defendants.

- -x

Plaintiff, by his attorneys, Erdheim, Shalleck & Falk, complaining of the defendants, respectfully shows to this Court and alleges that:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: That, at all times hereinafter mentioned, the plaintiff and defendant, Mildred Terner, were and still are husband and wife.

SECOND: That, the plaintiff and the defendant, Mildred Terner, are residents and domiciliaries of the State of New York, County of Westchester.

THIRD: That, at all times hereinafter mentioned the defendant, Kraftco Corporation, was and still is a domestic corporation duly authorized to transact business within the State of New York.

FOURTH: That one, Louis Terner, is the father of the plaintiff.

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FIFTH: That on the following dates plaintiff's father, Louis Terner, conditionally transferred and as hereinafter set forth the following securities representing shares of common stock in National Dairy Products Corporation (now Kraftco Corporation) owned by Louis Terner and registered in the name of Louis Terner to the defendant, Mildred Terner:

DATE OF TRANSFER	CERTIFICATE NUMBER	NUMBER OF SHARES
December 12, 1956	V 99742	100
December 12, 1956	V 0111460	20
August 29, 1957	V 111079	100
August 29, 1957	V 0125446	50

SIXTH: That on or about April 28th, 1966 the National Dairy Products Corporation (now Kraftco) declared a two-for-one split of the common stock in said corporation.

SEVENTH: That as a result of the aforesaid stock split, Certificate Number VV 10698 representing 270 shares of common stock in National Dairy Products Corporation (now Kraftco) was caused to be registered in the name of defendant, Mildred Terner.

EIGHTH: That at all times hereinbefore mentioned, plaintiff's father Louis Terner intended that the aforesaid shares of common stock in National Dairy Products Corporation (now Kraftco Corporation) were to be the sole property of the plaintiff with nominal ownership only in the name of defendant Mildred Terner.

NINTH: That the plaintiff has since the original transfer of stock as alleged hereinabove and on each subsequent transfer, retained possession of the stock certificates detailed in Paragraph "FIFTH", it being understood between the plaintiff, plaintiff's father, and defendant, Mildred Terner, that plaintiff is and was the owner of all said securities

TENTH: That the defendant, Mildred Terner did receive and continues to receive substantial profits, proceeds and dividends from the securities hereinbefore listed in Paragraph "FIFTH" and upon information and belief the defendant, Mildred Terner, has from time to time acquired various other securities, the identity of which are presently unknown to the plaintiff through the means of the aforesaid profits, proceeds and dividends derived from the aforesaid securities in National Dairy Products Corporation (now Kraftco Corporation), the extent and amount of which is substantial but presently unknown to the plaintiff, and for all of which the defendant, Mildred Terner has failed and refused to account to plaintiff.

ELEVENTH: That plaintiff is without adequate remedy at law

AS AND FOR A SECOND CAUSE OF ACTION

TWELFTH: Repeats each and every allegation contained in Paragraphs "FIRST" through "ELEVENTH" inclusive of this complaint as though fully set forth at length herein.

THIRTEENTH: That in or about July, 1968 the defendant, Mildred Terner, falsely and fraudulently represented to the plaintiff's father, Louis Terner, that she was destitute and that the plaintiff allegedly was not providing her with sufficient and adequat support and that as a result thereof she was in dire need of funds.

FOURTEENTH: That plaintiff's father, Louis Terner, in reliance upon the aforegoing fraudulent representations, on or about July 17, 1968 did transfer to the defendant, Mildred Terner, Stock Certificate Number VO 392557 representing 65 shares of Common Stock in defendant Kraftco Corporation which shares were owned and regis-

tered in the name of plaintiff's father Louis Terner.

FIFTEENTH: That plaintiff was the intended beneficiary of said 65 shares of common stock in Kraftco Corporation prior to the connivance, fraud, and trickery of defendant, Mildred Terner all of which caused plaintiff's father, Louis Terner, to transfer his interest in said securities to said defendant.

SIXTEENTH: That both the plaintiff and his father, Louis Terner, have made due demand upon the defendant, Mildred Terner for the return of said securities which demand has been refused.

SEVENTEENTH: That plaintiff is without adequate remedy at law.

WHEREFORE, plaintiff demands judgment on both causes of action as follows:

1. Declaring the plaintiff to be the owner of the securities listed in Paragraphs "FIFTH" and "FOURTEENT and directing defendant Mildred Terner to endorse the same over to him or in the alternative compelling defendant, Kraftco Corporation to register 605 shares of Kraftco Corporation common stock from the name of defendant to that of the plaintiff;

2. Requiring the defendant, Mildred Terner to render to plaintiff a full and just account of all dealings and transactions made and had by her with the funds derived from the securities in defendant Kraftco Corporation nominally registered in her name;

3. Requiring the defendant, Mildred Terner, to pay to the plaintiff all profits, proceeds and dividends secured by her from said securities with appropriate interest,

together with the costs and disbursements of this action, and such other and further relief as may be just and proper in the premises.

ERDHEIM, SHALLECK & FALK
Attorneys for Plaintiff
Office & P. O. Address
342 Madison Avenue
New York, New York 10017
MU 2-1116

JA 72

Complaint 14

STATE OF NEW YORK)
CITY OF NEW YORK) SS.:
COUNTY OF NEW YORK)

WILLIAM TERNER, being duly sworn, deposes and says that deponent is the Plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this

23rd day of November, 1970

William Terner

Notary Public, State of New York
No. 41-[illegible] County of Queens
Term Expires March 30, 1971

MINUTES OF PROCEEDINGS OF APRIL 24, 1974 1

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF WESTCHESTER

WILLIAM TERNER,

Plaintiff,

- against - : 1309/1971

MILDRED TERNER and KRAFTO CORPORATION,

Defendants.

Special Term, Part III.

County Court House,
White Plains, N. Y.
Wednesday, April 24, 197..

Before:

HON. JOHN C. MARBACH, J.S.C.

APPEARANCES:

ERDHEIM, SHALLECK & FALK, Esqs.,
342 Madison Avenue,
New York, N. Y.,
Attorneys for the Plaintiff,
by IRVING I. ERDHEIM, Esq.

DEMPSEY, SPRING, O'KEEFFE & FLORENCE, Esqs.,
175 Main Street,
White Plains, N. Y.,
Attorneys for the Defendant Mildred Terner,
by JAMES DEMPSEY, Esq.

Herbert M...
Court Ste...

THE CLERK OF THE COURT: Terner against Terner.

MR. DEMPSEY. Ready.

MR. ERDHEIM: Application your Honor. May this application be taken down stenographically?

THE COURT: Yes, it may.

MR. ERDHEIM: Your Honor, this application is being made in the presence of my client, William Terner.

At the outset, may I respectfully direct the Court's attention to the fact that, back in May of 1971, I dispatched the original examination before trial of the defendant to counsel for the defendant, and it has never been returned to me. I called it to his attention today for the first time.

At this time, your Honor, and I have been in conference with my client since last Friday -- this case originally was on the calendar, I believe, on April 17 --

THE COURT: It was set down at the

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opening of the term for April 17, and, in order to accommodate engagements of counsel --

MR. ERDHEIM: I was engaged before your Honor on --

THE COURT: [continuing] -- I moved it to an early date, for today. I cleared it with Judge Gagliardi and with the Appellate Division, as you know, and took Mr. Dempsey away from another engagement in another court which demanded his presence. I have made every adjustment with other courts to have you both here today.

MR. ERDHEIM: I understand that.

THE COURT: What is your next application?

MR. ERDHEIM: I respectfully request permission to withdraw as attorney for the plaintiff, for the following reasons:

First, my client, William Terner, and I have reached an insurmountable impasse with respect to the manner of the

presentation of this case, so much so that Mr. Terner has consulted with other counsel, a Mr. Samuel Gottlieb of the law firm of Gainsburg, Gottlieb, Levitan & Cole.

When I returned from the Appellate Division, First Department, yesterday, before Mr. Justice Mr. Capozzoli, I talked to Mr. Gottlieb at about 5:30 p.m., and he advised me that he would represent the plaintiff in this action in the event of my withdrawal as attorney.

I feel, therefore, your Honor, that my client is entitled to counsel of his own choice, and that under all the circumstances I cannot properly represent him further in this action.

I respectfully request, therefore, permission to withdraw as attorney for the plaintiff in this action, and I further request a short adjournment so that Mr. Gottlieb can come in and adequately prepare for the trial of this action on behalf of the plaintiff. I have so advised

the plaintiff --

THE COURT: Where is Mr. Gottlieb?

MR. ERDHEIM: I talked to Mr. Gottlieb yesterday. I asked him to be here today. He told me that, because of a prior engagement -- and I don't recall whether he said it was the Federal Court in New York or the Federal Court in Florida -- it was impossible either for him or a member of his firm to be present today, but that the situation, your Honor --

THE COURT: Is Mr. Terner here?

MR. ERDHEIM: Yes, sir, he is here.

THE COURT: Mr. Terner, have you retained Mr. Gottlieb?

THE PLAINTIFF: Yes, sir.

THE COURT: When did you retain him?

THE PLAINTIFF: I retained Mr. Gottlieb yesterday.

THE COURT: Do you know that this case has been on this calendar for trial at this term from the beginning of this term, and do you know that this Court will

not permit a shift of counsel at the last minute?

THE PLAINTIFF: No, sir.

THE COURT: I will set this case down for tomorrow, with Mr. Gottlieb. If he can't be here, there will be somebody else from his firm. This case will be on tomorrow morning.

What other applications are there? Do you want to say something, Mr. Dempsey?

MR. DEMPSEY: Yes, I do. I know Mr. Erdheim from away back -- and, about the examination before trial, let me say this --

THE COURT: That's easy. Don't waste my time on it.

MR. DEMPSEY: I just want it on the record, because I have the original examination of my client. It has been executed.

THE COURT: Why didn't you return it to the other lawyer?

MR. DEMPSEY: Because I am waiting

for the return of the examination of Mr. Terner. I want to exchange them. I am not going to give him my examination until I get his, your Honor. I had it executed here --

THE COURT: Please --

MR. DEMPSEY: -- in May of 1971.

THE COURT: I am not going to pay any attention to this problem at all, Mr. Dempsey, except for this: that if the deposition of Mr. Terner has not been signed, and he is in court now, we are going to proceed and use it as though it were executed.

It's a very simple proposition: A delay in returning an executed deposition is not going to stop the trial or prohibit its use; and, if he doesn't want to take the opportunity of making the corrections which execution of the deposition would permit, that's his problem.

Now, let's go on to the next matter.

MR. ERDHEIM: Your Honor, am I relieved

as counsel for the plaintiff?

THE COURT: Mr. Terner has indicated that he has retained other counsel. I am not going to force that situation.

MR. ERDHEIM: Therefore, is my appearance not required tomorrow morning, your Honor?

THE COURT: Your appearance is not required. Mr. Gottlieb's is.

MR. ERDHEIM: Thank you.

THE COURT: No counsel is going to be permitted to take on a matter pending and set down for trial on a day certain and not attend to it. You get on the phone and call Mr. Gottlieb's office, Mr. Terner, and everybody in the case stand by out in the hall while I take the rest of the calendar.

Mr. Terner, you make sure that you have arrangements to have Mr. Gottlieb or somebody else here to handle this trial tomorrow, or action will be taken by this Court to dismiss.

MR. ERDHEIM: Should I call Mr. Cottillo?

THE COURT: Yes. I will not permit a shift of counsel at the last minute to tie up the Court or prevent it from holding a trial. And if any client thinks that tactic will work, he is mistaken. You go out and get that lawyer and get him here.

MR. ERDHEIM: May I be excused?

THE COURT: Yes, sir. Mr. Dempsey you and your client stand out in the hall, if you wish, until we make certain the arrangements are made.

When I say "dismiss," I mean dismissed with prejudice, Mr. Terner. I will have that explained to you. You will not be allowed to shift attorneys when you are ready to go to trial.

THE PLAINTIFF: Yes.

THE COURT: All right.

[The parties and both counsel left the courtroom. When they returned, the proceedings continued as follows:]

MR. ERDHEIM: I should like to correct

a statement I made to your Honor at the outset this morning. I told you that it was my impression that Mr. Gottlieb was engaged in the Federal Court. That is not a fact. I know because I talked with Mr. Gottlieb on the telephone four seconds ago. As a matter of fact, I talked to him for about ten minutes. I want to correct that record.

THE COURT: Will he be here this morning?

MR. ERDHEIM: May I just -- I should like to tell you my telephone conversation with him.

THE COURT: Go ahead.

MR. ERDHEIM: In my telephone conversation with Mr. Gottlieb, I read to him verbatim the statement which I had made to the Court, and I also told him that I had told your Honor that it was my impression he was in the Federal Court, and I was surprised to talk with him on the telephone.

He told me as follows: He said that he could be here on May 2 to try the case.

THE COURT: Well, that -

MR. ERDHEIM: May I say why?

THE COURT: You finish, and then I will make a ruling.

MR. ERDHEIM: He said it was for the following reasons:

Number 1 is that tomorrow morning, pursuant to a direction made by a Judge of the Federal Court -- he gave me the name of the Judge, and I cannot read the handwriting -- in the case of -- I can't even read that handwriting -- he has a meeting of counsel and clients at ten o'clock, at his office, tomorrow morning, and they are coming in from Pennsylvania.

At two o'clock in the afternoon, he has a hearing before Judge Duffy in the Federal Court, United States Southern District, in a case entitled United States vs. Leone Bosiergi.

I told Mr. Gottlieb that it was

your Honor's direction that he or an associate -- I added "or an associate" -- be present tomorrow morning or else that it was your Honor's statement that you would dismiss this action with prejudice.

THE COURT: Yes, sir.

MR. ERDHEIM: He said he will be available on May 2, 1974. And I am repeating to your Honor my conversation had with Mr. Gottlieb.

MR. DEMPSEY: Your Honor --

THE COURT: Now, Mr. Dempsey, this is a matter of court administration. I don't want you to say anything.

You have a lawyer here tomorrow, Mr. Terner, or the case will be dismissed. You cannot, I repeat, shift counsel when a case is on for trial and has been set down for a day certain, and no lawyer is going to be permitted by the courts to take a matter on, when it is on for a day certain, and not be available for that day.

I repeat now: You have your lawyer

in here tomorrow morning, or this case will be dismissed. Nine-thirty tomorrow morning.

MR. ERDHEIM. I think your Honor --

THE COURT: You are relieved.

MR. ERDHEIM: I am relieved? Thank you, sir.

THE COURT: Yes, sir.

MR. ERDHEIM: Good morning, your Honor.

I hereby certify that the foregoing is a true and correct transcript.

May 3, 1974.

Robert Abel
Court Stenographer

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Exhibit C Annexed to Affidavit of Rosalind Fink
Minutes of Proceedings of April 25, 1974

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF WESTCHESTER

WILLIAM TERNER, Plaintiff, - against - MILDRED TURNER and KRAFTCO CORPORATION, Defendants.	1309/1971

County Court House,
White Plains, N. Y.

Special Term, Part III.

Thursday, April 25, 1974,
10:00 A.M.

Before:

HON. JOHN C. MARBACH,

Justice of the Supreme Court.

APPEARANCES:

DEMPSEY, SPRING, O'KEEFFE & FLORENCE, Esqs.,
175 Main Street,
White Plains, N. Y.,
Attorneys for the Defendant Mildred Terner,
by JAMES DEMPSEY, Esq.

THE PLAINTIFF, in Person.

Herbert Abel,
Court Stenographer.

THE CLERK OF THE COURT: Terner against Terner and Kraftco.

MR. DEMPSEY: The defendant Mildred Terner is ready.

THE PLAINTIFF: The plaintiff has a statement to make to the Court, and that is --

THE COURT: Identify yourself, please.

THE PLAINTIFF: I am Mr. Terner.

THE COURT: Your first name, please.

THE PLAINTIFF: William Terner. As your Honor knows, there was a problem of a prior commitment involving Mr. Samuel Gottlieb, of the law firm of Gainsburg, Gottlieb, Levitan & Cole. That commitment has not been able to be rectified, and, because of that, Mr. Gottlieb is unable to be here this morning to represent me.

THE COURT: Mr. Dempsey?

MR. DEMPSEY: Well, your Honor made certain statements yesterday. I think the record should indicate that, some weeks ago -- my best estimate would be about six weeks ago -- this case was set

down for trial yesterday, April 24 --

THE COURT: It was originally set down for April 17, Mr. Dempsey -- and then, because of engagements on the part of Mr. Erdheim and yourself, I made an adjustment as to the date several weeks ago and cleared yesterday's date with both you and Mr. Erdheim. But it was originally set for the 17th.

Go ahead, Mr. Dempsey.

MR. DEMPSEY: I understood not only from your Honor, but from the Administrative Judge, that I was to be ready to proceed to trial yesterday.

Until yesterday, when the case was called upon the calendar, I had never heard that there was to be any request for an adjournment. I had never heard from anybody, until the case was called yesterday, that there was any problem about the trial.

I have had subpoenas issued by "so ordered" decree from this Court for

witnesses who appeared here yesterday and who, I assume, are here today; and while I don't want to be discourteous to anybody, attorney or adversary, at the same time I submit that there has been a very definite direction that this trial proceed with dispatch, and my client and I are here to try this case.

THE COURT: Is there a counterclaim, or just a complaint?

MR. DEMPSEY: Yes, there is a counterclaim. We are ready to proceed on that.

THE COURT: I have a short trial first -- the Bloomberg matter -- and then I will hear you.

I will tell you this, Mr. Terner, now: This matter which is ahead of yours now on the calendar, simply because you weren't ready yesterday, will take perhaps a couple of hours, if I don't settle it very soon. If I settle the Bloomberg case, you are going to be ready.

I have been given no affidavit of engagement. I have no proof that you even have an attorney -- outside of your word -- and while, under ordinary circumstances, I would accept your word, it is not enough for the record of this Court.

I have no appearance from Mr. Gottlieb's firm. It is a large firm, and I think that they show a distinct lack of courtesy towards the Court and an absolute failure to fulfill their professional obligations. They were told yesterday on the telephone that the case would be on today and that they were to be here today -- either Mr. Gottlieb or an associate.

We were told yesterday that Mr. Gottlieb was engaged -- and then, when his office was called, it turned out that he was in his office and not engaged in any other court.

We now have the same situation: there is no appearance from that office.

You will stand by, Mr. Terner, and,

when I find out whether I have to try the Bloomberg case, I will then make a decision in regard to this matter.

You had better call Mr. Gottlieb's office again and tell them that we expect them to do the minimum -- that is, when they are in a case, to have somebody from that very large firm here, and to have an attorney address the Court.

I will see you very shortly.

THE PLAINTIFF: May I add something, sir?

THE COURT: What is it?

THE PLAINTIFF: Mr. Gottlieb had only been engaged the day prior to the time --

THE COURT: Mr. Gottlieb is on a case which was set for trial within a day or two -- and, when he undertook that case, he took on the responsibility of meeting that time schedule.

You just stand by, please. Your case may either be dismissed, or we may go ahead with the counterclaim. It may

not be this morning -- it may be after lunch -- but this case is going to be disposed of, or a trial begun, today.

You tell that law office for me, Mr. Terner, in no uncertain terms, that they owe a responsibility to this Court. They took your case on, and their obligation is to be here.

All right, sir.

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[At 1:55 p.m., the proceedings were resumed, as follows:]

THE COURT: Mr. Terner?

THE PLAINTIFF: Yes, sir.

THE COURT: I don't see any attorney here.

THE PLAINTIFF: I telephoned Mr. Gottlieb, and I was able to reach him. He asked if he could have your Honor's permission to telephone you and explain some extenuating circumstances as to why he is not here.

THE COURT: Mr. Dempsey?

MR. DEMPSEY: Your Honor, it seems to me that the Court is entitled to some rights and my client is entitled to some rights.

I greatly suspect that a game is being played here, and we are the victims. I was here yesterday -- I held yesterday open for this trial -- with my client and with the witnesses under subpoena; and your Honor said that, if the case was not ready yesterday, you would set it down for today, and that, if Mr. Terner was not ready today, you would dismiss the cause of action.

I am going to ask you please to do just that: to direct that this case go on for trial as soon as the matter before you is concluded -- and, if Mr. Terner is not ready to proceed, I would like to move to dismiss.

I have had this not only in this court, your Honor. I had the same situation

in the past few weeks in the Appellate Division, where, without any notice at all, when I got there, Mr. Terner said the same thing about this same Mr. Gottlieb, and the Appellate Division said: "Not a bit of it. You go on."

I am going to ask your Honor -- my client and I are entitled to that consideration here -- please to direct that this case go on as soon as the matter before you is concluded.

THE COURT: I now learn, Mr. Terner, not that Mr. Gottlieb was retained the day before yesterday, but that you made that statement to the Appellate Division. I learned it not only from Mr. Dempsey, but I checked what happened on that appeal, and learned that Mr. Gottlieb was being retained several weeks ago.

THE PLAINTIFF: Not on this case, your Honor.

MR. DEMPSEY: On Terner against Terner, a matrimonial case involving the same parties.

THE COURT: I know it was not this same action, Mr. Terner -- but you were consulting Mr. Gottlieb on the matters between yourself and your wife several weeks ago.

I will take this matter as soon as the Bloomberg trial is over.

THE PLAINTIFF: May I --

THE COURT: It's not necessary to comment. There may be another hour of testimony in the Bloomberg matter -- and then, if counsel is not ready to proceed with Mr. Terner, I will take an inquest on the defendant's counterclaim in the action.

In about one hour, gentlemen, I will be ready for you.

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[At 2:50 p.m., the proceedings were resumed, as follows:]

THE COURT: Earlier this afternoon, I directed Mr. Terner and Mr. Dempsey to be

available, and I said that I would take up this matter in mid-afternoon, as soon as I got a break from the other trial.

Just about ten minutes ago -- it is now 2:50 -- I sent the court officer to try to locate Mr. Terner. I ask him now: Have you searched the building?

THE COURT OFFICER: Yes, sir.

THE COURT: Have you checked the men's rooms and everything else?

THE COURT OFFICER: Yes, sir.

THE COURT: Have you sighted Mr. Terner?

THE COURT OFFICER: No, your Honor.

THE COURT: Are you ready to proceed, Mr. Dempsey?

MR. DEMPSEY: I am, your Honor.

May the record indicate that I have been here in this court, personally, since 9:30 a.m. yesterday, April 24, 1974, ready to proceed to trial. My client has been here, as well. I have had at least one witness here who has been subpoenaed

by a "so ordered" subpoena signed by your Honor; that witness has come from New York, and has also been here all day yesterday and today.

When Mr. Erdheim withdrew from this case yesterday morning, your Honor directed that the matter go on this morning at 9:30.

I call your Honor's attention to the fact that I was here this morning, at the stated time, with my client and with at least this one witness. I have been available all day long. I understood, and I am sure counsel understood and the parties understood, that this case was to proceed to trial yesterday morning. I am ready to proceed now, and if the plaintiff is not here in court at this time, as apparently he is not, and if there is no one here in court representing the plaintiff, I move at this time to dismiss the complaint of the plaintiff in this action, with prejudice and with costs.

THE COURT: The application is granted.

Are you ready to proceed with the counterclaim?

MR. DEMPSEY: Yes, I am, your Honor. First, may I call this gentleman who is here under subpoena, so that I will not presume upon his time any further?

THE COURT: Yes, have him take the stand.

[The plaintiff entered the courtroom.]

THE COURT: Let the record show that Mr. Terner is here. Mr. Terner, we are proceeding on the counterclaim. I will, of course, permit you to give any testimony in connection therewith that you wish to give.

All right, swear the witness, please.

F R A N C I S X. M A N F R E, called as a witness in behalf of the defendant Mildred Terner and being first duly sworn by the Clerk of the Court, testified as follows:

[The witness stated that he resides at 2411 Hubbard Street, Brooklyn, New York.]

DIRECT EXAMINATION

BY MR. DEMPSEY:

Q By whom are you employed?

A Manufacturers Hanover Trust Company.

Q Are you here testifying pursuant to a subpoena which was served upon either the Kraftco Corporation or the Manufacturers Hanover Trust Company?

A That's correct.

Q Have you produced here, pursuant to subpoena, the records with respect to the stock in the Kraftco Corporation in the name of Mildred Terner, a defendant in this action?

A I have produced some records.

Q Are these the records which you have produced [handing to the witness]?

A Yes, they are.

MR. DEMPSEY: May this sheet be marked for identification, please.

[The document referred to was marked Defendant's Exhibit A for Identification.]

Q Is this paper, Defendant's Exhibit A for Identification, a paper kept in the regular course of business of the Manufacturers Hanover Trust Company,

Stock Transfer Department?

A Yes, it is.

Q What is the relationship between the Manufacturers Hanover Trust Company, in your Stock Transfer Department, and the defendant Kraftco Corporation?

A Manufacturers Hanover Trust Company acts as the transfer agent and dividend disbursing agent for the Kraftco Corporation.

Q As transfer agent for Kraftco Corporation, do you have, in Manufacturers Hanover Trust Company, records indicating in whose name stock certificates in the Kraftco Corporation may be entered?

A That is correct.

Q Do you also have records with respect to the payment of dividends on such stock of the Kraftco Corporation?

A Yes, sir.

Q And the paper which has been marked here is a paper kept in the regular course of business of the Manufacturers Hanover Trust Company; is that correct?

A Not entirely.

Q Tell us what it is.

A We have original records which we maintain. What I have in front of me here is a transcript of the information which is on it -- what we call a ledger card. There is also a photocopy of that here.

Q And is that an exact and complete transcript of what is on the record card?

A Yes.

Q And that has been produced here pursuant to subpoena; is that correct?

A That is correct.

MR. DEMPSEY: Your Honor, I offer that in evidence.

THE COURT: Show it to Mr. Terner.

[Defendant's Exhibit A for Identification was handed to the plaintiff.]

THE PLAINTIFF: Thank you [returning document].

THE COURT: Mark it in evidence.

[The document previously marked Defendant's Exhibit A for Identification was received in evidence.]

Q I ask you to state, if you will, please,

what this paper, Defendant's Exhibit A in Evidence, indicates with respect to ownership of stock in Kraftco Corporation by the defendant Mildred Terner.

A. Well, this represents that Mildred Terner is the registered holder of 540 shares, as of yesterday.

Q. Does that paper indicate as of what time and date she became the registered owner?

A. Yes.

Q. Will you tell us the date, please?

A. The first entry here would be that a certificate was issued on December 12, 1956, for 20 shares, and also, on that same date, a certificate for 100 shares, totalling 120 shares for a balance.

Q. Tell us about the other entries.

A. There are some subsequent entries: on August 29, 1957, one certificate for 100 shares, and also another certificate for 50 shares, that bringing the balance in this account to 270 shares. Subsequently, on April 28, 1966, there was a 2-for-1 stock split, whereby we issued a certificate for an equal number of shares, which is 270, and that now brought the balance in the account to 540 shares.

THE COURT: One certificate for 540

shares was issued?

THE WITNESS: No, one certificate for 270. To effect a 2-for-1 stock split, we merely have the stockholder keep what he or she had, and we just add that same number.

Q What date was that in 1966?

A That was April 28, 1966.

Q From April 28, 1966, right down to the present time, April 25, 1974, has the defendant Mildred Terner been the record owner of 540 shares of stock of the Kraftco Corporation?

A There is one more entry here, on July 17, 1968, for 65 shares; and then, later, on August 17, 1973, there is a notation that that certificate was cancelled -- it was surrendered -- thereby bringing the new balance to 540 shares.

Q In other words, there were an additional 65 shares in her name, which have been sold, so that at one time she had as many as 605 shares; is that correct?

A Yes.

Q But, from April 1966 to the present time in

April 1974, she has been the record owner of at least 540 shares; is that correct?

A Yes.

Q And she is the record owner of 540 shares of stock of the Kraftco Corporation at the present time; is that correct?

A She is the record holder.

THE COURT: Is National Dairy Products Corporation shown on your records as the predecessor of Kraftco?

THE WITNESS: Yes, that is correct.

THE COURT: When did the change in name take place?

THE WITNESS: The name was changed to Kraftco Corporation effective April 17, 1969.

MR. DEMPSEY: I have no further questions of this witness, your Honor.

THE COURT: Do you want to ask the witness any questions, Mr. Terner?

THE PLAINTIFF: Am I representing myself pro se, your Honor?

THE COURT: If you want to assist

yourself, I will give you that opportunity.

THE PLAINTIFF: I have no questions.

THE COURT: Thank you, Mr. Manfre.

[Witness excused.]

MR. DEMPSEY: I call Mildred Terner.

M I L D R E D T E R N E R, one of the defendants, called as a witness in her own behalf and being first duly sworn by the Clerk of the Court, testified as follows:

[The witness stated that she resides at 17 Cornell Street, Scarsdale, New York.]

DIRECT EXAMINATION

BY MR. DEMPSEY:

Q Mrs. Terner, you are a defendant in this action; is that correct?

A Yes.

Q Were you and the plaintiff, William Terner, married on or about June 16, 1946?

A Yes.

Q There has been a matrimonial action in the Supreme Court, between you and William Terner, involving that marriage; is that correct?

A Yes.

Q Have you resided in the County of Westchester for some years?

A Yes.

Q And you reside here at the present time; is that correct?

A Yes.

Q On or about December 12, 1956, did William Terner's father, Louis Terner, deliver to you some shares of stock in what was then known as National Dairy Products Corporation and is now known as Kraftco Corporation?

A Yes.

Q Will you please tell us approximately how many shares of stock he delivered to you at that time?

A I think it was 100, and then 20.

Q One hundred and twenty; is that correct?

A Yes.

Q Will you please tell us the circumstances with respect to the delivery of the shares of stock by Louis Terner to you at that time?

A Yes. They visited our home --

Q You say "they." Whom do you mean?

A Mr. and Mrs. Louis Terner. She was alive at the time. They came to visit us, and Mr. Terner came in and he handed it to me and he said: "Mildred, I would like you to have this; I want you to have it. It's yours, and you keep it."

Q What was the "this" he referred to?

A The stock.

Q The stock certificates?

A Yes.

Q For how many shares?

A I think it was 100, and then 20.

Q A total of 120; is that correct?

A Yes.

Q Did he actually deliver the stock certificates to you?

A He put it right in my hand. It was an envelope. I opened it and saw what it was, and he was very happy to give it to me.

Q What did you do with those certificates?

A I gave them to Mr. Terner.

Q What did you do with respect to the name of the holder of the certificates? Did you have the certificates put in your name at that time?

A The certificates were in my name -- Mildred Terner.

Q Have you owned those certificates from that time down to the present time?

A Yes.

Q And those certificates, you say, totaled 120 shares?

A Yes.

Q On or about August 29, 1957, was there a transaction between Louis Terner and you involving 150 shares of National Dairy Products Corporation, the predecessor in interest of the defendant Kraftco Corporation?

A Yes.

Q Will you please tell us the circumstances involved in that?

A Mr. and Mrs. Louis Terner were visiting us, and Mr. Louis Terner brought me an envelope, and I opened it in front of him, and it was 150 shares of stock.

Q What did he say to you?

A He said: "Mildred, this is for you; I want you to have it. It's yours."

Q Those two gifts by Mr. Louis Terner to you totaled 270 shares of stock in that corporation, National Dairy Products Corporation, now known as Kraftco Corporation; is that correct?

A Yes.

Q On or about April 28, 1966, did National Dairy Products Corporation declare a 2-for-1 split of stock?

A Yes.

Q So the 270 shares became 540 shares; is that correct?

A Yes.

Q From the time these stock certificates were given to you by Louis Terner, right down to the present time, April 25, 1974, have you been the owner of what was first 270 shares of stock in this corporation, which, by virtue of a stock split, is now 540 shares?

A Yes.

Q And do you own those certificates at the present time?

A Yes, I do.

Q From 1967, approximately down to the present

time, have you received the dividends on those 540 shares of stock?

A Intermittently.

Q When was the last time you received any dividends?

A 1969.

Q Have you received any dividends whatsoever upon these shares of stock from January 1, 1969 down to the present time?

A No.

Q Do you know who has received the dividends?

A As of September 1970, Kraftco is holding them in escrow.

MR. DEMPSEY: Your Honor, there are two things I would like to do, which can very easily be done. First, I would like to ascertain the amount of those dividends for the record, and I would also like to have for the record the value of the 540 shares of stock.

THE COURT: If you can identify it by particular certificate numbers, it's not necessary to have evidence of value.

MR. DEMPSEY: All right, sir.

THE COURT: [To the witness] Do you physically have the certificates?

THE WITNESS: No, I don't.

THE COURT: Who has those?

THE WITNESS: Mr. Terner has them.

THE COURT: As to the value, I will look at today's New York Times.

[Examining newspaper] According to the New York Stock Exchange listing on page 60 of today's New York Times, Kraftco closed yesterday at 43-1/2, down 1-1/2 from the previous day.

MR. DEMPSEY: I would like to have these two photocopies marked for identification, please [handing to the stenographer].

[Two photocopies marked Defendant's Exhibit B for Identification.]

Q I show you Defendant's Exhibit B for Identification and ask you whether these are accurate and complete photocopies of the certificates for 120 shares of stock which were delivered to you by Louis Terner under the circumstances and upon the date

you have testified to in this court.

A Yes.

Q So far as you know, in whose possession are the originals of these stock certificates?

A William Terner.

Q The plaintiff in this action?

A Yes.

MR. DEMPSEY: I offer these photocopies in evidence, your Honor [handing to the plaintiff].

THE PLAINTIFF: May I make some notations here?

THE COURT: Not on those papers.

THE PLAINTIFF: No, not on those papers. On a separate sheet.

THE COURT: Yes, surely.

If you have others, Mr. Dempsey, let's mark them.

MR. DEMPSEY: I have only two more exhibits, your Honor. But, first, may we get through with these, which I have offered in evidence?

THE COURT: They will be accepted.

[The two photocopies previously marked Defendant's Exhibit B for Identification were received in evidence.]

MR. DEMPSEY: I have here two more photocopies of stock certificates, your Honor, one for 100 shares and the other for 50 shares, dated August 29, 1957. Could they please be marked as one exhibit for identification?

[Two photocopies marked Defendant's Exhibit C for Identification.]

Q I show you Defendant's Exhibit C for Identification and ask you whether these two certificates, both dated August 29, 1957 and both in the name of Mildred Terner, are the certificates totaling 150 shares of stock concerning which you have testified here.

A Yes.

Q Where are the originals of those certificates?

A In Mr. William Terner's possession.

MR. DEMPSEY: I offer these in evidence [handing to the plaintiff].

THE PLAINTIFF: Thank you [returning

photocopies].

THE COURT: They will be received in evidence.

[The two photocopies previously marked Defendant's Exhibit C for Identification were received in evidence.]

MR. DEMPSEY: I now ask that these two sheets [handing to the stenographer] be marked for identification.

[Two sheets marked Defendant's Exhibit D for Identification.]

Q I show you Defendant's Exhibit D for Identification and ask you whether it comprises a stock certificate in the name of Mildred Terner, dated April 28, 1966, for 270 shares, together with a letter from the National Dairy Products Corporation with respect to the 2-for-1 split of this stock.

A Yes.

Q Who has the original of this stock certificate, of which I have shown you a photocopy?

A It is in Mr. William Terner's possession.

MR. DEMPSEY: I offer these two sheets in evidence.

THE COURT: Show them to Mr. Terner.

[Defendant's Exhibit D for Identification was handed to the plaintiff.]

THE PLAINTIFF: Accepted.

THE COURT: Mark them in evidence, please.

[The two sheets previously marked Defendant's Exhibit D for Identification were received in evidence.]

Q Have you made a demand upon William Terner to deliver to you these 540 shares of stock of Kraftco Corporation which are in your name?

A Yes.

Q Has he delivered them to you?

A No, he hasn't.

Q Have you made a demand upon Kraftco Corporation to issue to you replacement certificates for 540 shares of stock of that corporation?

A I believe so. I'm not sure.

Q What is your best recollection?

A I believe we did.

Q That is your best recollection?

A Yes.

Q And has Kraftco Corporation replaced or delivered to you these 540 shares of stock?

A No, they haven't.

Q Have you made a demand upon William Terner to deliver to you the dividends which you have not received upon this stock?

A Yes, I have.

Q Have you received those dividends after making such demand?

A No, I have not.

MR. DEMPSEY: I have no further questions. We rest, your Honor.

THE COURT: Mr. Terner, I am going to permit you to testify in narrative form. That means you may come to the stand and tell your story.

THE PLAINTIFF: May I ask questions?

THE COURT: You may ask questions.

CROSS EXAMINATION

BY THE PLAINTIFF

Q I would like to know how it was possible for the defendant to make photocopies of stock certificates that were ostensibly in my possession.

THE COURT: [To the witness] You may answer it.

A I don't know. Mr. Dempsey got those.

THE PLAINTIFF: Must I put Mr. Dempsey on the stand to answer that?

THE COURT: Maybe when you take the stand, Mr. Terner, we will find the answer. Let us see whether there is an issue on it. Do you deny you have them?

THE PLAINTIFF: There have been many side issues where I have charged my wife with stealing many things.

MR. DEMPSEY: I move to strike it.

THE COURT: Mr. Terner, please, we have to know whether there is a real issue before we waste time on questions. Do you deny that you --

THE PLAINTIFF: I do not know, because I have been barred from my office in my home by Mr. Justice Walsh, where I have had many, many of my records.

THE COURT: Thank you. That's a statement --

THE PLAINTIFF: And I have charged my wife with stealing records for a number of years --

THE COURT: All right --

THE PLAINTIFF: And this is a complete surprise to me.

MR. DEMPSEY: I move to strike it out.

THE COURT: Next question.

Q Have you endorsed the dividend checks on these shares?

A What period of time are you referring to?

Q From the time that the shares were issued. Have you endorsed them and submitted these dividend checks to me, with your full knowledge that I was depositing these checks in my own account?

MR. DEMPSEY: I must object to that question.

THE COURT: Overruled.

A During the first years, I endorsed them, and you gave me a check -- your own personal check -- and, when I asked you why you wanted to do that, you just said you wanted to keep the records straight on the Kraftco stock. I endorsed it, and you gave me the

exact amount of the check. And then that was discontinued, and then I endorsed it and cashed it myself after a while.

Q Is it your understanding that, when I requested that you endorse the check, the check would not be deposited into my own personal checking account and declared on my own personal income tax?

MR. DEMPSEY: I object to that, your Honor.

THE COURT: Overruled. [To the witness] You may answer.

THE WITNESS: I don't understand that question. Could it be repeated, please?

THE COURT: [To the stenographer] Read it back, please.

[The last question was read by the stenographer.]

MR. DEMPSEY: I don't know what check he is referring to.

THE COURT: I think you should make it clearer, Mr. Terner.

Q I am referring to dividend checks, all of the dividend checks starting from 1956, up until

the time that you gave Kraftco -- or perhaps it was National Dairy Products at the time -- instructions to send the dividend checks to an address other than the marital home.

A I want to answer the first question that you asked.

THE COURT: Let her answer the first question.

A The answer to the first question is that you declared my dividends on your income tax as my income.

THE COURT: Did you file a joint return?

THE WITNESS: Yes.

THE COURT: At the time, did you separate the --

THE WITNESS: He separated it.

THE COURT: But you filed a joint return?

THE WITNESS: At that time, yes -- and it was separated. My dividends were --

THE COURT: Did a time come when you changed the address for mailing of the

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dividend checks?

THE WITNESS: Yes, I did.

THE COURT: When?

THE WITNESS: About 1969.

Q Did you change that address with my approval or consent?

MR. DEMPSEY: I object to that as immaterial.

THE COURT: Sustained.

Q Was there a reason that you changed the address?

MR. DEMPSEY: Same objection.

THE COURT: Sustained.

Q Do you have physical possession of these shares now?

THE COURT: [To the witness] You may answer that.

A I do not.

Q May I ask again how you were able to get photocopies of shares that are ostensibly in my possession?

A This is the first I have seen of them. Mr. Dempsey got them. I had no knowledge, until I

saw them --

Q Has Mr. Dempsey been in my office, in my home, with your approval and permission?

A Never.

Q Has he been through my personal papers?

A [No response]

THE COURT: Answer it, Madam.

A No, he has never been to the home. Mr. Dempsey has never been to 17 Cornell Street.

Q In other words, it's a mystery as to how these --

MR. DEMPSEY: I object to this. It's no mystery.

THE COURT: It's repetitious, anyway.

MR. DEMPSEY: It's no mystery.

THE PLAINTIFF: Did you say it's no mystery?

THE COURT: I said it's repetitious. That's argument --

THE PLAINTIFF: I'm not an attorney, your Honor.

THE COURT: I understand that. I'm trying to be fair to you and give you a

chance.

THE PLAINTIFF: Thank you, sir. But I would like to try to find out, in the interests of justice, how it is possible, if I have physical possession of shares of stock -- how they have photocopies, unless they were stolen from me.

THE COURT: It may not matter, Mr. Terner. Just go to the next subject, please.

MR. DEMPSEY: I think the record should indicate that there is a mark on all these exhibits: they have been marked for identification at an examination before trial in the action between these parties. Your Honor will see that --

THE COURT: Thank you.

THE PLAINTIFF: May I see where these were marked?

MR. DEMPSEY: Certainly. Do you see here [indicating]?

THE COURT: I'll do it, Mr. Dempsey.

MR. DEMPSEY: All right, your Honor. [To the plaintiff] Do you see right here

[indicating] -- "4/23/71"? Do you see that?

THE COURT: All right, next question.

Q May I ask where the original of the photocopy on the May 26th letter from National Dairy for the 2-to-1 stock split was secured from, in order to make the photocopy? That's May 26, 1966, I believe. Is that correct?

A My attorney would know. I don't know.

Q How long do you have this attorney?

A Since --

Q We're going back to 1966 now. Since when --

A They evidently were subpoenaed.

Q Not "evidently." When did you retain this attorney?

A 1970.

Q What part of 1970?

THE COURT: [To the plaintiff] Did you ask about a letter, or the --

THE PLAINTIFF: Yes, there was a letter that accompanied the additional 270 shares.

MR. DEMPSEY: Here's what he is referring to, your Honor [handing Defendant's

Exhibit D to the Court].

THE PLAINTIFF: I want to know where my ex-wife was able to make a photocopy of that letter.

THE COURT: It's part of the exhibit, Mr. Terner. Next question. I'm not interested in the side issues; I'm interested in the ownership of this stock. Do you want to ask her some questions about the delivery of the stock and what was said? That's what I want you to --

Q May I ask when you received 65 shares of stock from my father?

A In Peekskill.

Q And do you remember the year?

A 1968.

Q Do you remember the circumstances that precipitated the delivery of those 65 shares of stock?

A I don't know the circumstances that precipitated it. But I went up to visit him. He asked me to come up: I called him, and he said "I'd like to see you," and I went up to see him. And he took out 65 shares of stock -- a stock certificate of 65 shares --

and he said: "I want you to have this. And don't be a fool this time and give it to Billie. You keep it in your own vault."

Q Did you claim that you were destitute prior to the time that my father gave you those 65 shares of stock?

MR. DEMPSEY: That is objected to.

THE COURT: Sustained. [To the witness] Don't answer it.

Q What did you tell my father?

A I didn't tell him anything. He called me to come to visit him.

Q In other words, you didn't ask for these shares of stock?

A I did not.

Q He voluntarily gave these to you?

A He had the certificate, that day that he asked me to come, and he gave it to me.

Q I see. Was it your understanding with him that the reason that you were given these shares of stock was because you were supposed to cash them in because you claimed to be destitute?

MR. DEMPSEY: I object to this, if

your Honor please.

THE COURT: I sustain the objection. Mr. Dempsey, I am told that you are wanted on the telephone.

[Mr. Dempsey left the courtroom.]

THE COURT: I want you to understand, Mr. Terner -- I don't want to say this on the record -- well, I will put it on the record, Mr. Dempsey being out of the room -- I want you to know that his brother died this morning --

THE PLAINTIFF: I know that.

THE COURT: We went to such lengths in making arrangements to clear the way for this case and the lawyers involved that Mr. Dempsey is proceeding here, because of the complications that would result in other courts, despite the fact that his brother died this morning.

THE PLAINTIFF: I am fully aware of it.

THE COURT: I don't want any further mention of it. But I wanted you to know of it.

THE PLAINTIFF: I was aware of it. In fact, Mr. Gottlieb was most surprised that Mr. Dempsey would be here this afternoon.

I have been through four years of manifold litigation --

THE COURT: Please. I wanted to be sure you understood that.

THE PLAINTIFF: I understand it perfectly well, your Honor.

THE COURT: All right.

THE PLAINTIFF: May I continue?

THE COURT: We have to wait for Mr. Dempsey. It will be only a few moments.

[When Mr. Dempsey returned to the courtroom, the proceedings continued as follows:]

THE COURT: All right, Mr. Terner.

Q Did you ever have a conversation with my father where you indicated to him that you were going to take the subject 65 shares of stock that he gave you in 1968 and cash them in because you required personal funds, which you claimed that I did not give

to you?

MR. DEMPSEY: I object to this, your Honor.

THE COURT: Objection sustained. It's immaterial.

Q Did you ever tell my father that you had not cashed in these 65 shares of stock?

MR. DEMPSEY: Same objection.

THE COURT: Sustained. I am telling you, Mr. Terner, that the line of inquiry -- you are an intelligent man, and obviously you are familiar with this situation -- should relate to the circumstances under which the delivery was made. If you were present -- and the testimony is that, in the early stages, you were -- you may ask her about it and you may testify to it. If you were not present at the giving of the 65 shares, I don't see --

THE PLAINTIFF: May I ask one question?

THE COURT: Yes.

Q Was I present at the so-called passing of transfer or the so-called nominal gift to you of 65

shares from my father?

A No, you were not.

Q I was not present?

THE COURT: All right, now, let's stop --

THE PLAINTIFF: Okay.

THE COURT: In any event, these other types of questions don't make any difference. Motivation doesn't make any difference -- unless there were terms imposed. Now, let's get to that. You were present at the first two?

THE PLAINTIFF: That's correct.

THE COURT: I will let you testify to that or ask Mrs. Terner about it. Go ahead.

THE PLAINTIFF: In view of the fact that I am not an attorney, I decline to ask any questions on the subject.

THE COURT: Thank you, sir. You may step down, Mrs. Terner.

[Witness excused.]

THE COURT: Do you rest, Mr. Dempsey?

MR. DEMPSEY: We rest.

THE COURT: Mr. Terner, I will permit you to testify to what you say was said with respect to the first two groups of deliveries in your own fashion, in narrative form: you need not put questions to yourself. But do it succinctly, please. You may take the stand now, if you wish.

WILLIAM TERNER, the plaintiff, called as a witness in his own behalf and being first duly sworn by the Clerk of the Court, testified as follows:

[The witness stated that his address is 17 Cornell Street, Scarsdale, New York.]

THE COURT: Mr. Terner, you are the plaintiff in this case?

THE WITNESS: Yes, sir.

THE COURT: You were married to Mildred Terner, the witness who preceded you on the stand?

THE WITNESS: Yes, sir.

THE COURT: You have been in court

and have heard her testify that the shares of stock were delivered to her as gifts by your father in 1956 and 1957, have you not?

THE WITNESS: Yes, sir.

THE COURT: And you have heard her testify, in substance, that your father said to her "I want you to have it; it's yours"?

THE WITNESS: Yes.

THE COURT: Now, were you present on those occasions?

THE WITNESS: Yes, sir.

THE COURT: What do you say was said by your father, if anything, on those occasions?

THE WITNESS: My father presented these shares of stock to me and put the nominal name of my wife on these shares --

THE COURT: Just tell us what he said.

THE WITNESS: He said to me: "I am presenting these shares of stock to you, and your wife's name is nominally on these

shares of stock, and at any later time that you wish, for whatever reasons or any purpose you wish, you may retransfer these to yourself, and I instruct you to hold these shares of stock in your own safe deposit box."

MR. DEMPSEY: If your Honor please, I must object to the question and move to strike out the answer.

THE COURT: Objection overruled and motion denied. Go ahead, Mr. Terner.

THE WITNESS: The only other comment that I have to make is to clarify the situation that took place this morning, when unfortunately Mr. Samuel Gottlieb was chastised by Mr. Dempsey, and I wish to state publicly that I feel that Mr. Gottlieb's reputation as an attorney is equal to Mr. Dempsey's, and --

THE COURT: I chastised him, sir -- not Mr. Dempsey. I did, for his not being here and not extending courtesy to the Court.

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THE WITNESS: I do not believe that your Honor fully understood the circumstances that were utilized to chastise Mr. Gottlieb, because Mr. Gottlieb had not been aware of this particular circumstance of these cases until the day before yesterday. I am involved with forty-eight different cases --

THE COURT: He still hasn't contacted this Court, Mr. Terner, as we sit here now.

THE WITNESS: He wished to contact the Court --

THE COURT: Now, please, this is outside the merits of the case. Let's stop it. No lawyer from his office has been here in two days.

THE WITNESS: He wished to communicate with you, your Honor.

THE COURT: Is his office in New York City?

THE WITNESS: Yes, sir.

THE COURT: Was he physically in New York City yesterday? That phone in my

chambers never rang.

THE WITNESS: Your Honor, the --

THE COURT: Now, please, step down, Mr. Terner.

THE WITNESS: May I --

THE COURT: I don't want to continue the discussion on this subject.

THE WITNESS: May I make one other statement, your Honor?

THE COURT: I will let you make it, but not necessarily let it stand unrefuted. Go ahead.

THE WITNESS: All right. I wish to clarify the misunderstanding that my former attorney, Mr. Erdheim, had with myself concerning this matter. The misunderstanding was as follows:

Mr. Erdheim insisted that, in order for him to successfully carry forth this case, it would be necessary for my father to be flown here from Florida, where he is right now, in order to be a witness.

Now, my father will be 91 years of

age on May 2, 1974. He has been in the intensive care unit of a hospital this past summer. Because of that, I have declined to request that my father come here.

Now, Mr. Gottlieb felt that, if a proper application were to be made to your Honor, your Honor would recognize the fact that the keystone to this case is the testimony of Mr. Louis Terner, and that therefore you might permit a deposition of my father to be taken and to be presented to this Court, in view of his advanced age and in view of the fact that he had a cardiac arrest and was in the intensive care unit of a hospital for several months, which is a matter of record -- and I am sure that Mr. Dempsey recognizes that and understands that, because they used to be neighbors.

I make a formal request that this be permitted and that this be done.

THE COURT: Your application is denied.

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The case was reached for trial, and no motion was made to take the deposition. The date of trial was adjourned. I will not be engaged in a debate on trial tactics. The man who was trial counsel for you for many years was in charge of this case at the time it was set down for trial, and your father's condition was apparently known to have existed for some time.

Thank you, sir. Step down.

THE WITNESS: May I make one comment for the record, sir?

THE COURT: No, please don't, Mr. Terner. You are only getting yourself deeper in trouble.

THE WITNESS: All right, fine. I did want to make a comment, but if you do not permit me --

THE COURT: I will let you make it, but I tell you that, every time you say something, you get yourself --

THE WITNESS: I say that a man 91 years

old can have one good day and four bad days, and therefore it's a very touch-and-go situation, where I certainly would not wish this on my conscience -- to subject a man this age to cross examination in a court, especially by an attorney as proficient as Mr. Dempsey. That is all I have to say, and I give him all the credit in the world.

MR. DEMPSEY: I would like the record to indicate, your Honor, that I have not at any time chastised or criticized Mr. Gottlieb in any way.

THE COURT: I want to make it clear that I did. You may step down, Mr. Terner.

[Witness excused.]

MR. DEMPSEY: I would like the record to indicate, since Mr. Terner is concerned about it, that, in his examination before trial herein, there is a statement by Mr. Erdheim: "While the witness is refreshing his recollection, let the record indicate that I have photostatic copies

of certificates numbered..." -- and there were certificates marked in. Those certificates were produced by Mr. Erdheim, who was then representing Mr. Terner, and were marked as exhibits in Mr. Terner's examination before trial in this very case, your Honor.

THE COURT: Thank you, sir.

First, let me say that the Court renews its determination not to adjourn this trial. It is now ten minutes to four, on the second day that this matter has been on, during which time Mr. Cottlieb, supposedly a new attorney, has failed to contact this Court by a telephone call or to have anybody here.

I have made inquiries, in addition to the statement made by Mr. Dempsey, and have found that a similar situation did exist several weeks ago at the Appellate Division, in the argument of a matrimonial appeal in which Mr. Gottlieb was to be brought in as attorney in place

of Mr. Erdheim.

I didn't get all the details, but Mr. Gottlieb's interest in the overall litigation here and a change from the day when an appeal was to be argued occurred in that matrimonial case -- not the instant case -- with the same lawyers being involved.

I repeat that no application of any kind was made to take the deposition of this witness, and the case was set down for trial. No medical certificate was presented.

On the merits, taking into account not only the testimony of the parties but the years that went by with the continued record of the payment of dividends and the holding of the stock in the name of Mildred Terner, this Court finds that Mildred Terner is the true unconditional owner of the shares of stock at issue here. I credit her as a credible witness, and I accept her testimony.

The Court notes that, even on Mr. Terner's version of the terms of the delivery, he was speaking of a transaction between himself and his father which would appear to me to be unenforceable, even if his version is true.

However, I credit Mrs. Terner's testimony that the stock was delivered unconditionally to her and remained there for many years, until the matrimonial dispute arose.

Anybody who sits in this court, as I do, in both matrimonial parts and equity parts, cannot but remark how often no attempt is made to change a gift from one spouse to another, or from in-laws to a daughter-in-law or son-in-law, until the matrimonial trouble starts. It is a constant syndrome.

I make this finding as a finding of fact: The same issues lie in both the complaint and the counterclaim. I award judgment on the counterclaim to the

defendant Mildred Terner and order, first, that the plaintiff, William Terner, return to her -- through her attorney, so that there may be a proper record made -- these certificates which, according to her testimony, she believes he has and she does not have.

In the alternative, if Mr. Terner makes a formal record, in answer to the judgment, that he does not have that stock and does not control its possession in the hands of any agent of his, then the transfer agent, Manufacturers Hanover Trust Company, and Kraftco Corporation itself are ordered to cancel, of record, the prior certificates as outstanding, and to substitute in their stead a new group of certificates in the same units previously issued to Mildred Terner, but with new numbers.

Separately, in addition thereto, Kraftco Corporation or other escrow agent holding the accumulated dividends is

ordered forthwith to transmit those to the defendant Mildred Terner through her attorney, James Dempsey, Esq.

This Court will not substitute a dollar amount of relief for the stock. There is a well recognized transfer agent, which will obey an order of this Court.

The defendant Mildred Terner also will be entitled to costs in the action. No interest is awarded because the escrow arrangement will have to control.

This constitutes the findings and conclusions of the Court, which technically is an equity action.

No formal findings and conclusions need be submitted, other than those which the Court has now dictated on the record. I will execute the original transcript, send a copy to each side, and file the original in the office of the County Clerk.

I return the exhibits to Mr. Dempsey.

Are we now ready to resume the trial of the Bloomberg matter?

THE PLAINTIFF: Your Honor, may I make one comment concerning the Appellate Division, Second Department?

MR. DEMPSEY: Could I be heard for one second?

THE PLAINTIFF: May I be heard? I asked first.

THE COURT: Mr. Terner was on his feet first, Mr. Dempsey.

THE PLAINTIFF: An application was made a week before April 1, 1974, when Mr. Dempsey was due to argue this appeal that your Honor was referring to, which was on a motion for a new trial.

I, personally, went to see the Chief Clerk of the Second Department, Mr. Selkin, and I advised him at that time that there would be a change of counsel in so far as the argument was concerned. Mr. Selkin had instructed me to have somebody make a formal application on April 1, 1974, in order to substitute counsel, and Mr. Dempsey's office was notified of that

the prior week. Firstly, Mr. Dempsey was notified by Mr. Erdheim; and, secondly, Mr. Dempsey was notified by Mr. Samuel Gottlieb's office.

Mr. Samuel Gottlieb was on trial in Florida, in the Federal Court -- I don't recall the name of the action -- but he felt that the action would be finished in time for him to try my action, and Mr. Gottlieb felt that my action had tremendous merit, and he also felt that I had not received justice in the lower court --

MR. DEMPSEY: Are you finished?

THE COURT: Please, Mr. Dempsey --

MR. DEMPSEY: Could I be heard? Mr. Terner is not accurate. I was never notified until after I had left my office on the Friday before the Monday when this was to come on at nine o'clock. So the first word I got was in court --

THE COURT: Please --

MR. DEMPSEY: May I ask your Honor

to do one thing, if you will be so kind, in connection with the decision and judgment? Would your Honor include therein the dividends unpaid and withheld --

THE COURT: I thought I did that in my direction to the escrow agent. I thought the testimony was that Kraftco, as escrow agent, was holding the accumulated dividends, and I ordered those to be paid.

Let me say one thing to you, Mr. Terner, and then this will be finished. On other occasions, when Mr. Dempsey has failed to show up in court because of multiple engagements, I have ordered somebody else from his office to come in here. In one case, some months ago, Mr. Dempsey had a similar excuse, and I required some other counsel from his office to be in court, because the case was on for a certain date, and I made Mr. Spring, of Mr. Dempsey's office, go ahead with the trial of the action.

In other words, it is even-handed, Mr. Terner. I will not make any further comments at all about --

THE PLAINTIFF: May I state for the record --

THE COURT: The Court is in recess on your case. There will be no statements.

Judgment will be on notice, however, to the firm of which Mr. Gottlieb is a partner.

CERTIFICATION PURSUANT TO RULE 2105 CPLR

I, SIDNEY RABEKOFF, attorney for appellant in this appeal, certify, pursuant to Rul 2105 CPLR, that the foregoing printed record on appeal has been personally compared by me with the originals on file in the Westchester County Clerk's Office and found to be true and complete copies of said originals and the whole thereof of the Notice of Appeal, the judgment appealed from, and of all the papers which were used in the court below and which are specified in the judgment appealed from and the whole thereof, now on file in the Westchester County Clerk's Office.

Dated: July 23, 1974.

SIDNEY RABEKOFF
Attorney on this Appeal
for Appellant
WILLIAM TERNER

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Exhibit D Annexed to Affidavit of Rosalind Fink
Judgment of Justice Marbach

At a Special Term, Part III of the Supreme Court of the State of New York held in and for the County of Westchester at the County Courthouse in the City of White Plains, New York on the 15 day of May, 1974

PRESENT:

HON. JOHN C. MARBACH,

Justice.

----------X

WILLIAM TERNER,

Plaintiff,

- against -

MILDRED TERNER and KRAFTCO CORPORATION,

Defendants.

----------X

JUDGMENT

Index # 1309/71
Calendar # 05-MJC-73

The issues in this action having duly come on for trial on the 25th day of April, 1974, at a Special Term, Part III, of this Court held at the Courthouse thereof, at White Plains, New York, before Hon. John C. Marbach, one of the Justices of this Court, and the plaintiff having appeared in person, and Dempsey, Spring, O'Keeffe & Florence, (by James Dempsey, of counsel) having appeared on behalf of the defendant MILDRED TERNER; and the proofs and allegations of the parties on the complaint and counterclaim having been heard, and the Court having thereafter made its decision, dismissing plaintiff's complaint and granting judgment in favor of the defendant MILDRED TERNER, for the relief demanded in her counterclaim to the extent hereinafter set forth,

Now, on motion of Dempsey, Spring, O'Keeffe & Florence,

attorneys for the defendant, MILDRED TERNER, it is

ORDERED, ADJUDGED and DECREED, that the plaintiff's complaint be and the same is hereby dismissed on the merits, with costs; and it is further

ORDERED, ADJUDGED and DECREED, that the defendant MILDRED TERNER have judgment against the plaintiff for the relief demanded in her counterclaim, to the extent hereinafter set forth; and it is further

ORDERED, ADJUDGED and DECREED, that the defendant MILDRED TERNER be, and she is hereby adjudicated to be, the true and unconditional owner of Five Hundred Forty (540) shares of common capital stock of the Kraftco Corporation, (heretofore evidenced by certificates numbered V 99742, VO 111460, VO 125446, V 111079, and VU 10698;) and it is further

ORDERED, ADJUDGED and DECREED, that, within ten (10) days after service of a copy hereof with notice of entry, the plaintiff WILLIAM TERNER shall deliver to the defendant MILDRED TERNER, the said certificates representing Five Hundred Forty (540) shares of common capital stock of the Kraftco Corporation which delivery shall be made at the offices of defendant's attorneys, Dempsey, Spring, O'Keeffe & Florence, 4175 Main Street, White Plains, New York; and it is further

ORDERED, ADJUDGED and DECREED, that in the event the plaintiff does not deliver said Five Hundred Forty (540) shares of common capital stock of the Kraftco Corporation, as herein ordered, the defendant Kraftco Corporation or its transfer agent Manufacturers Hanover Trust Company shall cancel of record the said Five Hundred Forty (540) shares of common capital stock of the Kraftco Corporation and shall issue in their stead

Five Hundred Forty (540) other shares of common capital stock in the Kraftco Corporation in the name of the defendant, MILDRED TERNER, which said certificate of stock shall be transmitted to the defendant MILDRED TERNER at the offices of her attorneys Dempsey, Spring, O'Keeffe & Florence, #175 Main Street, White Plains, New York; and it is further

ORDERED, ADJUDGED and DECREED, that the Kraftco Corporation, its agents and employees, having dividends which have accrued on the said Five Hundred Forty (540) shares of common capital stock of Kraftco Corporation, but which dividends have not to date been paid, be, and they are hereby, ordered to remit such accrued dividends to the order of the defendant, MILDRED TERNER, at the offices of her attorneys Dempsey, Spring, O'Keeffe & Florence, #175 Main Street, White Plains, New York; and it is further

ORDERED, ADJUDGED and DECREED, that the defendant MILDRED TERNER, 17 Cornell Street, Scarsdale, New York be and she is hereby awarded costs of this action against the plaintiff WILLIAM TERNER, P.O. Box 36, Eastchester, New York.

ENTER

S/ John C. Marbach
Justice Supreme Court

Filed May 24, 1974
George R. Morrow Jr.
County Clerk,
County of Westchester

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

WILLIAM TERNER,

Plaintiff,

- against -

KRAFTCO CORP., MANUFACTURERS HANOVER TRUST CO. (Transfer Agents For KRAFTCO CORP.), HON. JOHN C. MARBACH, Justice of the Supreme Court of the State of New York, and MILDRED TERNER,

Defendants.

----------x

75 Civ. 3673 (WK)

AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

WILLIAM TERNER being duly sworn deposes and says:

1. I am the plaintiff herein and make this affidavit in opposition to the motion of defendant Judge Marbach to dismiss.

2. The motion heretofore filed by defendant Judge Marbach is addressed to plaintiff's original complaint, which deals with a single instance of the deprivation of plaintiff's concurrently cross-move for leave to serve an amended complaint and add additional defendants including persons whose concerted actions have deprived plaintiff of his Constitutional rights. Plaintiff's amended complaint amplifies the claims asserted in his original complaint, sets forth in detail the circumstances giving rights to those claims and names the responsible parties.

3. Plaintiff's proposed amended complaint does not seek to have this Court review prior judicial decisions rendered

in the State Courts or retry issues earlier litigated between plaintiff and his former spouse. The gist of plaintiff's proposed amended complaint is that certain acts of commission and omission of members of the State Judiciary and others had the effect of depriving plaintiff of his Constitutional right of due process of law and equal protection of the laws -- in this case, fair and unbiased hearings.

4. Judge Marbach's submitted papers supporting the contention that the complaint should be dismissed contain minutes of the hearings on April 24, 1974, and April 25, 1974, before Judge Marbach. In their Exhibit "C", their page numbers 8 and 9 which correspond to page numbers 53 and 54 in plaintiff's NOTICE OF MOTION FOR LEAVE TO APPEAL WITH PAPERS AND BRIEF IN SUPPORT THEREOF, and annexed hereto as Exhibit "1" defendant Mildred Terner's attorney James Dempsey, Esq., the senior partner of Dempsey and Spring, P.C., of White Plains, New York, asserts to Judge Marbach as follows:

> "***I have had this not only in this Court your Honor. I had the same situation in the past few weeks in the Appellate Division, where without any notice at all, when I got there, Mr. Terner said the same thing about this same Mr. Gottlieb and the Appellate Division said: 'Not a bit of it. You go on.'***"

On that same page 9, also known as page 54 (as explained before), Judge Marbach states as follows:

> "THE COURT: I now learn, Mr. Terner, not that Mr. Gottlieb was retained the day before yesterday, but

that you made that statement to the Appellate Division. I learned it not only from Mr. Dempsey, but I checked what happened on that appeal and learned that Mr. Gottlieb was being retained several weeks ago.

THE PLAINTIFF: Not on this case your Honor."

Judge Marbach indeed had permitted himself to first be influenced by attorney Dempsey to the extent of checking with the Appellate Division, Second Department as to the authenticity of attorney Dempsey's derogatory allegations against plaintiff. The report received by Judge Marbach from the Appellate Division, Second Department was derogatory to plaintiff William Terner.

5. Only nine days before, on April 15, 1974, an order was signed by the Appellate Division, Second Department with Judge James D. Hopkins presiding, which denied William Terner's appeal for a motion for a new trial based upon Court irregularities, perjuries, and newly discovered evidence in the New York State, Westchester Court divorce litigation entitled Terner v. Terner, Index Number 7920/1970. The proposed amended complaint contains evidence of a personal and social relationship between attorney James Dempsey and Judge Hopkins which was never revealed at that hearing nor did Judge Hopkins disqualify himself.

6. Judge Marbach permitted the Appellate Court presided over by Judge Hopkins to color the credibility of William Terner. This is clearly reflected in subject minutes.

7. This chain reaction bias of one Court influencing another has nothing to do with retrying the case or insulating a Judge from a lawsuit as a result of an alleged unfair decision. The issue here is deprivation of plaintiff's Constitutional

rights because of bias. Judge Marbach relieved attorney Irving I. Erdheim of Erdheim, Shalleck and Falk of N. Y. C., the former counsel for plaintiff and yet refused a few days of requested grace in order to have plaintiff represented by counsel of his choice.

8. Defendant Judge Marbach's same papers erroneously referred to further New York State Judicial remedies available to plaintiff William Terner. A NOTICE OF MOTION FOR LEAVE TO APPEAL WITH PAPERS AND BRIEF IN SUPPORT THEREOF was made to the Court of Appeals of N. Y. State in that action entitled William Terner against Mildred Terner and Kraftco Corp., in April, 1975, and which is attached hereto as Exhibit "1." A decision was rendered on June 5, 1975, denying said motion which is attached hereto as Exhibit "2."

9. In consideration of the above facts and in light of plaintiff's pending motion for leave to serve an amended complaint, defendant Judge Marbach's motion directed to the original complaint is premature. It is respectfully submitted that that motion should be denied with leave to renew, or should be held in abeyance pending service of the amended complaint and joinder of the additional parties defendant.

WILLIAM TERNER

Sworn to before me
this 5th day of
December, 1975

Jonathan L. Silberman

NOTARY PUBLIC
JONATHAN L. SILBERMANN
N.Y. COUNTY #4608933
TERM EXPIRES 03/07/77

Affidavit of Raymond M. Pezzo in Support of
William Terner's Application

JA 156

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM TERNER,

Plaintiff,

- against -

KRAFTCO CORP., MANUFACTURERS HANOVER TRUST CO. (Transfer Agents for KRAFTCO CORP.), HON. JOHN C. MARBACH, JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, ~~HON. WILLIAM A. WALSH, JR., JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, HON. LEONARD RUBENFELD, JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, HON. JAMES D. HOPKINS, JUSTICE OF THE APPELLATE DIVISION OF THE STATE OF NEW YORK, JAMES DEMPSEY, BERNARD G. GORDON, JERALD S. KALTER~~, AND MILDRED TERNER,

Defendants.

AFFIDAVIT

75 Civ. 3673 (WK)

RAYMOND M. PEZZO, being duly sworn deposes and says:

1. I am an attorney at law, duly admitted to practice in the State of New York with offices at 272 Mill Street, Poughkeepsie, New York and I hereby submit this affidavit in support of plaintiff William Terner's application seeking a temporary restraining order.

2. On October 4, 1975, I was requested by the plaintiff herein, to assist in an application on his behalf in an action that he is the defendant, pro se, in the Supreme Court of the State of New York, Westchester County, entitled Terner v. Terner, Index Number 7920/1970 for an APPLICATION FOR A GRANT OF STAY of a date for a sequestration hearing to the Supreme Court of the State of New York in White Plains, Westchester County, on October 6, 1975, at Special Term, Part V.

3. On October 5, 1975, I communicated with Steven A. Greenwold, an attorney, whose office is at 64 Market Street, Poughkeepsie, New York to determine whether or not he could appear at Supreme Court, Special Term, Part V, in White Plains, New York on the following date. Mr. Greenwold advised me that he was available and during the evening hours of October 5, 1975, he came to my office at which time William Terner was also present. I explained to Mr. Greenwold the nature of the matter that was to be heard at Special Term, Part V. The purpose of the appearance in Special Term, Part V was to have a date scheduled for a sequestration hearing in Terner v. Terner, aforementioned, however, Mr. Terner was seeking a stay under CPLR 2201 as a Federal action was contemplated.

4. On October 6, 1975, at noontime, Steven A. Greenwold telephoned me at my office and advised me of the following sequence of events:

a. He arrived at the Court House in White Plains at approximately 9:00 a.m. and when Special Term, Part V commenced, he submitted a copy of the ex-parte application for grant of stay together with the affidavit in support of application for a stay to A. F. Dugan of Dempsey and Spring, P. C., the attorneys for plaintiff Mildred Terner who admitted service by signing the admission of service form attached thereto. (William Terner's original ex-parte application for grant of stay and supporting affidavit and Mr. Dugan's admission of service, all of which were submitted to Special Term, Part V, Westchester County

Supreme Court were not accepted by Justice Ruskin as more fully explained hereinafter and are annexed hereto and marked Exhibit "1.")

b. At the calendar call in Special Term, Part V, the aforesaid papers were handed to Justice Ruskin who glanced at the front page and returned them advising that Justice Caruso was hearing motions, including ex-parte motions and that said papers should be submitted in his Court. At that time Justice Ruskin set November 10, 1975, as the date for the sequestration hearing in Terner v. Terner.

c. Justice Caruso never appeared in his Court and Mr. Greenwold was advised to return to Justice Ruskin's Court who would hear the said application after the general calendar call.

d. Mr. Greenwold returned to Justice Ruskin's Courtroom and prior to re-submitting said papers, requested that a Court stenographer record the proceedings in connection with the submission of said papers. Justice Ruskin appeared angered at this request and stated that this was "highly irregular" and refused to comply with the request to have a Court stenographer.

e. After the said papers were handed to Justice Ruskin, he again returned them to Mr. Greenwold without reading them, contending that insufficient notice was given to the adversary and, therefore, would not consider them. At that time, Mr. Dugan advised

Justice Puskin that he had acknowledged service earlier that morning but was sorry that he had done so.

f. Mr. Greenwold reiterated to Justice Ruskin that the said application was submitted ex-parte pursuant to Section 2201 of the New York Civil Practice Law and Rules for which there is authorization to do so.

g. Despite the written application for a stay, Justice Ruskin stated that "If Mr. Terner wants a stay in this case, he will have to get it from the Federal Court."

h. Mr. Dugan then approached Mr. Greenwold and asked for the said papers to enable him to scratch out his name on the admission of service. However, Mr. Greenwold refused to do so.

Raymond M. Pezzo

RAYMOND M. PEZZO

Sworn to before me this
7th day of November, 1975

Frederick S. Kolk Co.

Notary Public

[illegible] 77

Memorandum and Order of District Judge Whitman Knapp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

WILLIAM TERNER, :

Plaintiff, :

- against - :

KRAFTCO CORP., MANUFACTURERS HANOVER TRUST CO. (Transfer Agents for Kraftco Corp.), HON. JOHN C. MARBACH, JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, and MILDRED TERNER, :

Defendants. :

- -x

MEMORANDUM AND ORDER

75 Civ. 3673

KNAPP, D.J.

Plaintiff, appearing pro se, has brought this civil rights action pursuant to 42 U.S.C. §1983, alleging a denial of due process in various state court proceedings concerning his divorce from Mildred Terner. The action is for money damages and for injunctive relief staying the state court proceedings. One of the defendants, Hon. John C. Marbach, Justice of the New York Supreme Court, moves to dismiss the complaint for failure to state facts entitling plaintiff to any relief. Plaintiff cross moves for leave to file an amended complaint.

Plaintiff's motion to file an amended complaint is hereby granted. In sum, the amended complaint expands the number of defendants to include seven additional members of the New York State judiciary, the co-respondent in the divorce action and the attorney who represented the ex-wife. The new factual allegations similarly amplify the underlying claim.

Justice Marbach argues that the complaint should be dismissed on any of the following grounds: that judicial immunity protects him from suit, that §1983 was not intended to permit collateral attack on state court judgment, res judicata and the Rooker doctrine. Each of these grounds is inapposite.

Plaintiff has requested injunctive relief as well as money damages, and to that extent the doctrine of judicial immunity is inapplicable. Law Students Civil Rights Research Council, Inc. v. Wadmond (S.D.N.Y. 1969) 299 F.Supp. 117, affd. 401 U.S. 154 (1970). Other courts have commented in passing that §1983 should not be used to provide collateral review of state court judgments. However, we have found no authority suggesting that as a matter of law a well-supported claim of denial of due process could not be brought under §1983. Defendant relies on Pierre v. Jordan (9th Cir. 1964) 333 F.2d 951, where the court found that the plaintiff's primary objective was to obtain collateral review of a state court decision rather than to

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obtain redress of a deprivation of federal rights. Without being bound by the Ninth Circuit's "primary objective" analysis, we find that Terner is earnestly here pursuing such federal rights as he may have. With respect to defendant's contentions concerning res judicata and Rooker v. Fidelity Trust Co. (1923) 263 U.S. 413, we simply observe that plaintiff's essential claim is the alleged corruption of judicial officers before whom he appeared. In view of the ultimate disposition of this motion, it is unnecessary for us to determine whether and to what extent such a claim is appropriately litigated in state court.

Plaintiff has applied for a stay of the state court sequestration order against him, and in support of that application he has submitted a detailed statement of his claim supported by voluminous documentation of his various state court proceedings. As a result we have an ample record upon which to examine his claim that he was denied due process of law, and we have treated defendant's Rule 12(b) motion to dismiss as a Rule 56 motion for summary judgment.

Accepting as true all the facts set forth in plaintiff's four-part affidavit, we are constrained to conclude that they do not establish that plaintiff has been deprived of due process of law or any other right cognizable under the Constitution of the United States. Plaintiff's affidavit describes a matrimonial dispute of exceeding bitterness even by the standards we have unhappily come to treat as normal in that type of controversy. As usual in such situations, each

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side accuses the other of perjury and overreaching. The claims of the plaintiff in this federal litigation (the unsuccessful husband in the state courts) can be grouped under the following heading (as nearly as possible in chronological order, not necessarily in plaintiff's order of importance):

a) In the basic divorce action, the trial judge unreasonably rejected the husband's counterclaim of adultery;

b) The court unreasonably and without adequate consideration rejected various applications for rehearing and a new trial;

c) The court granted the excessive allowance to the wife and excessive counsel fees to her lawyers;

d) Various courts - including the Appellate Division - unreasonably refused adjournments to permit him to substitute new lawyers of his choice;

e) All the foregoing events can be explained by the circumstances that the wife's lawyer's friendship with various judges was so close as to suggest corruption.

As plaintiff himself appears to realize, it would be almost impossible to envisage claims (a) through (d) - either singly or in combination - assuming constitutional proportions unless the facts marshalled under claim (e) were sufficient to support a charge of official corruption. Examination of those facts discloses that

they are simply insufficient to support such a charge. These accusations boil down to the following: the wife's lawyer is in the habit of lavish entertainment and his parties are frequented by judges, among others; he is on a first name basis with many judges; the Governor has appointed him to a committee to screen candidates for the bench (a fact which presumably might influence judges hoping for promotion); and, finally, that he is known as a political lawyer with close friends in all segments of the political system. However, there is no fact alleged to suggest that the lawyer ever made a corrupt contribution to any judge, or that he - with the claimed exception of the instant litigation - ever obtained a judicial decision to which the law and the facts did not entitle him.

All in all, the record satisfies us that plaintiff has alleged no colorable claim under the Constitution of the United States. His complaint - as amended - is accordingly dismissed. Since the foregoir considerations invalidate the complaint as to all defendants, it is dismissed as to all.

SO ORDERED.

Dated: New York, New York

January 7, 1976.

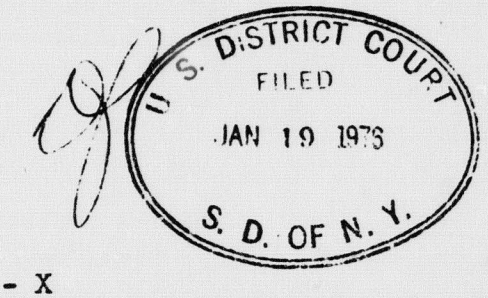
WHITMAN KNAPP, U.S.D.J.

Judgment

(14)

Knapp, J.

JA 165



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM TERNER Plaintiff	:	75 Civil 3673 (WK)
-against-	:	JUDGMENT
KRAFTCO CORP., MANUFACTURERS HANOVER TRUST CO. (Transfer Agents for Kraftco Corp.), HON. JOHN C. MARBACH, JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, and MILDRED TERNER Defendants	:	

Defendant Hon. John C. Marbach, having moved the Court to dismiss for failure to state facts entitling plaintiff to any relief, and the motion having come on to be heard before the Honorable Whitman Knapp, United States District Judge, and the Court thereafter on January 9, 1976, having handed down its memorandum opinion granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendants KRAFTCO CORP., MANUFACTURERS HANOVER TRUST CO. (Transfer Agents for Kraftco Corp.), HON. JOHN C. MARBACH, JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, and MILDRED TERNER, have judgment against plaintiff WILLIAM TERNER dismissing the complaint as to all defendants.

Dated: New York, N.Y.
January 19, 1976

Raymond F. Burghardt
Clerk

Notice of Appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JA 166

WILLIAM TERNER,

Plaintiff,

-against-

KRAFTCO CORP., MANUFACTURERS HANOVER TRUST CO. (Transfer Agents for Kraftco Corp.), HON. JOHN C. MARBACH, JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, and MILDRED TERNER,

Defendants.

NOTICE OF APPEAL

75 Civ. 3673 (WK)

S I R S:

PLEASE TAKE NOTICE, that the undersigned plaintiff, appearing herein pro se, hereby appeals to the Court of Appeals for the Second Circuit, from the judgment dated and entered herein on January 19, 1976 dismissing, pursuant to the Memorandum and Order of Hon. Whitman Knapp, District Judge, plaintiff's complaint as amended and from each and every part of said judgment.

Dated: New York, N.Y.
February 14, 1976.

Yours, etc.

William Terner

William Terner, Pro Se
575 Madison Avenue, Rm.1006
New York, N.Y.10022
(212) PLaza 9-6700

TO:

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New York, N.Y.10005

KELLEY, DRYE & WARREN, ESQS.
Attorneys for Defendant,
MANUFACTURERS HANOVER TRUST CO.
(Transfer Agents for Kraftco Corp.)
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LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Attorney for Defendant
HON.JOHN C. MARBACH, Justice of the
Supreme Court of the State of New York
Two World Trade Center
New York, New York 10047

DEMPSEY & SPRING, P.C.
Attorneys for Defendant,
MILDRED TERNER
175 Main Street
White Plains, New York 10601

CLERK, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Affidavit of Service by Mail

In re:

William Terner v. Hon. James D. Hopkins, et al

State of New York
County of New York, ss.:

Harry Minott,

being duly sworn, deposes and says, that he is over 18 years of age. That on June 28th, 1976, he served one copy of the within Joint Appendix in the above named matter on the following counsel by enclosing said three copies in a securely sealed postpaid wrapper addressed as follows:

James Dempsey, Esq.
Dempsey and Spring, P.C.
175 Main Street
White Plains, New York 10601

N.Y.S. Sen. Bernard G. Gordon
(Chairman, N.Y.S. Judiciary Comm.)
1019 Park Street
Peekskill, New York 10566

Jerald S. Kalter, M.D.
130 East 67th Street
New York, N.Y. 10021

and depositing same in the official depository under the exclusive care and custody of the United States Post Office Department within the City of New York.

and depositing same at the Post Office located at Howard and Lafayette Streets, New York, N. Y. 10013.

Harry Minott

Sworn to before me this 28th
day of June 1976

Jack A. Messina

JACK A. MESSINA
Notary Public, State of New York
No. 30-2673500
Qualified in Nassau County
Cert. Filed in New York County
Commission Expires March 30, 1977

Affidavit of Service by Mail

In re:

William Terner v. Hon. James D. Hopkins, et al

State of New York
County of New York, ss.:

Harry Minott,

being duly sworn, deposes and says, that he is over 18 years of age. That on June 28th, 1976, he served ~~3 copies~~ one copy of the within Joint-Appendix in the above named matter on the following counsel by enclosing said three copies in a securely sealed postpaid wrapper addressed as follows:

James Dempsey, Esq.
Dempsey and Spring, P.C.
175 Main Street
White Plains, New York 10601
(re: Mildred Terner now known as Mrs. Jerald S. Kalter)

Sullivan & Cromwell, Esqs.
48 Wall Street
New York, N.Y. 10005
(re: Kraftco Corp.)

Kelley, Drye & Warren, Esq.
350 Park Avenue
New York, N.Y. 10022
(re: Manufacturers Hanover Trust Co.)

and depositing same in the official depository under the exclusive care and custody of the United States Post Office Department within the City of New York.

and depositing same at the Post Office located at Howard and Lafayette Streets, New York, N. Y. 10013.

Harry Minott

Sworn to before me this 28th
day of June 1976

Jack A. Messina

JACK A. MESSINA
Notary Public, State of New York
No. 30-2673500
Qualified in Nassau County
Cert. Filed in New York County
Commission Expires March 30, 1977

Service of 2 copies of the within Appendix is hereby admitted this 28th day of June 1976

Signed _____

Attorney for Defendants-Appellees

For James D. Hopkin, et al

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DEPARTMENT OF LAW
JUN 2 1 1976
NEW YORK CITY OFFICE
ATTORNEY GENERAL

Louis J. Lefkowitz
Atty Gen

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